



THE SCOTTISH OFFICE

Scotland's Children

The Children (Scotland) Act 1995
Regulations and Guidance

Volume I

Support and Protection for
Children and their Families

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Volume I

Support and Protection for Children and their Families

Social Work Services Group

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Foreword

The Children (Scotland) Act 1995 marks a significant stage in the development of legislation on the care of children in Scotland. It is centred on the needs of children and their families and defines both parental responsibilities and rights in relation to children. It sets out the duties and powers available to public authorities to support children and their families and to intervene when the child's welfare requires it.

The Regulations, Directions and Guidance which are included in this and the other two volumes are designed to provide guidance on the implementation of Parts II, III and IV of the Act. Guidance on the implementation of Part I of the Act (the Private Law Provisions) has already been published to accompany the implementation of that Part of the Act on 1 November 1996.

The full implementation of the Act also requires complementary Rules of Court which govern procedures applying to the whole range of children's cases which come to court, both in family proceedings and in those which involve public authorities in the discharge of their duties towards children. These Rules are issued separately.

The essential principles behind the Act, which is the primary legislative framework for Regulations, Directions and Guidance, are

- each child has a right to be treated as an individual
- each child who can form a view on matters affecting him or her has the right to express those views if he or she so wishes
- parents should normally be responsible for the upbringing of their children and should share that responsibility
- each child has the right to protection from all forms of abuse, neglect or exploitation
- so far as is consistent with safeguarding and promoting the child's welfare, the public authority should promote the upbringing of children by their families
- any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies working in collaboration.

In support of the principles three main themes run through the Act

- the welfare of the child is the paramount consideration when his or her needs are considered by courts and children's hearings
- no court should make an Order relating to a child and no children's hearing should make a supervision requirement unless the court or hearing considers

that to do so would be better for the child than making no Order or supervision requirement at all

- the child's views should be taken into account where major decisions are to be made about his or her future.

In addition, there is a requirement at various parts of the Act for those providing for children to have regard to religious persuasion, racial origin and cultural and linguistic background.

Within these volumes are published, alongside the guidance, the relevant Regulations and Directions. Regulations and Orders are types of subordinate legislation made by the Secretary of State under statutory powers. They take the form of a Statutory Instrument and are subject to Parliamentary procedure. Local authorities must comply with the terms of such Regulations. The Secretary of State also has power to issue Directions to local authorities under section 5(1A) of the Social Work (Scotland) Act 1968. Directions are not subject to Parliamentary procedure but local authorities must comply with such Directions.

The Secretary of State may also issue guidance under section 5(1) of the Social Work (Scotland) Act 1968 which gives him the power to issue general guidance to local authorities. Authorities are under a statutory obligation to perform their functions under the general guidance. Guidance in these volumes contains descriptions of the primary legislation (the Act), the secondary legislation and Directions with which authorities have to comply. This guidance needs to be read strictly within the terms of the Act and the subordinate legislation and Directions made. It does not interpret the law; that is for the courts. While local authorities are under an obligation to perform their functions under the general guidance, they have a discretion as to whether or not to follow it in a particular case. However, if challenged or questioned (for instance by a member of the public or even a court), they may have to justify a decision not to follow the guidance.

The guidance is issued by the Secretary of State to local authorities under section 5 of the Social Work (Scotland) Act 1968. It is addressed principally though not exclusively to local authorities which are the main public agencies with duties and powers conferred on them by the Act. Local authorities are regarded as corporate entities, discharging functions of social work, education, housing and recreation which affect children. It is also addressed to the police and the health service as making a valuable contribution towards services for children through Health Boards and NHS Trusts. A duty is laid down within the Act for other local authorities and for Health Boards and Trusts to collaborate with local authorities - when requested - in the discharge of functions under the Act. The guidance is of relevance to voluntary organisations commissioned to discharge functions under the Act. Finally, those engaged in the Children's Hearings System will wish to be aware of the guidance, particularly as it affects provision for children who may be in need of compulsory measures of supervision.

The volumes of Regulations, Directions and Guidance are under the following headings

Support and protection for children and their families (Volume 1)

Children looked after by local authorities (Volume 2)

Adoption and parental responsibilities orders (Volume 3)

Some topics covered within those headings are covered by Regulations *and* Guidance and others are appropriately covered by Regulations or Guidance.

A final volume contains a bibliography and an index of the key words and phrases which feature in the preceding volumes.

In dealing with different aspects of child care each section of guidance is cross-referred to others. Common elements are to be found in, for example, the guidance dealing with children looked after, residential care, secure care and aftercare. The guidance is designed to be interrelated and not to be used in discrete sections. Those who use the guidance to assist them in playing their parts in implementing the Act should find it useful to familiarise themselves with the whole range which is set out in this and succeeding volumes, while at the same time concentrating their attention on the particular sections most closely related to their roles and functions.

The guidance should assist managers and practitioners with the functions which come within the Act but full preparation for performance of individual roles and functions will also depend on training devised for the purpose.

The guidance does not of itself impose duties and powers and it should be used by local authorities and others in assessing local needs, delivering services and determining policies and priorities, within the resources available to them. This will inevitably involve reappraisal of current resource priorities and, where necessary, progressive implementation of policies and programmes, within the statutory framework set by the Children (Scotland) Act 1995.

Guidance

Promoting the Welfare of Children and Families

1. Local authorities have a general duty to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area. The Act also introduces a general duty to safeguard and promote the welfare of children in need in their area and, so far as is consistent with that duty, to promote the upbringing of children in need by their families by providing a range and level of services appropriate to the children's needs. A child is in need if he or she is in need of care and attention because:
 - (a) he or she is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless the local authority provides services for him under Part II of the Act; *Section 12*
Social Work (Scotland) Act 1968
Section 22(1)
 - (b) his or her health or development is likely significantly to be impaired, unless such services are so provided;
 - (c) he or she is disabled; or
 - (d) he or she is affected adversely by the disability of any other person in his or her family. *Section 93(4)*
2. The Act also states that services may be provided:
 - (a) for a particular child; *Section 22(3)*
 - (b) if provided with a view to safeguarding or promoting his or her welfare, for his or her family; or
 - (c) if provided with such a view, for any other member of his or her family.
3. For purposes of support for children and families "child" means a person under the age of eighteen years. "Family", in relation to a child, includes any person who has parental responsibility for a child and any other person with whom the child has been living. *Section 93(2)*
Section 93(1)
4. A service may comprise or include giving assistance in kind, or in exceptional circumstances, cash. The local authority should normally explore all sources of actual or potential income before offering a cash payment. Assistance in cash or in kind may be given unconditionally or local authorities may request repayment of some or all of the value of assistance given. Before doing so, they should have regard to the means of the child concerned and his parents. They cannot require a person to make repayment if that person is in receipt of income support, family credit or a jobseeker's allowance. *Section 22(3)(b)*
Section 22(4)
5. The duty to safeguard and promote the welfare of children in need falls upon the local authority as a whole, and embraces social work services, education, housing

Section 19

and any other relevant services required to safeguard and promote the welfare of such children. In discharging their duty to prepare and review children's services plans, local authorities should identify the overall needs of children in their area in order to decide what range and level of services they should provide.

Section 25

6. A wide range of children come within the Act's definition of a child in need. Some will require a great deal of help from social work and other departments, and from health and psychological services. Some children require services because their parents need help in caring for them to ensure that they achieve a reasonable standard of health or development, or to prevent impairment of their health or development. Most of the work to help children in need whose health or development may be impaired is carried out with children living at home and being cared for by their parents with support from social workers and services such as day care, family centres and primary care services. Some of these children may also be the subject of supervision requirements or court orders for their protection or assessment. In some cases a child's welfare will be safeguarded or promoted by their living away from home and therefore some children in need will be provided with accommodation by local authorities in foster families or residential care under other provisions of the Act.

7. Families approach local authorities, or are referred by other agencies, for assistance with a wide range of needs and problems. Many will seek only information or advice about the care and upbringing of their children, or the availability of local services. Some referrals will be simple requests for the local authority to arrange or provide a specific service or resource related to a clearly identifiable need; others will be more complex. Some children will be referred because someone is worried about their welfare or safety. Sometimes families will be unaware of a referral or may not welcome local authority involvement.

Framework for Social Work Services

8. Making decisions about the right action to take to safeguard and promote a child's welfare requires the skilful exercise of professional judgement, backed by management supervision and support, within the context of the legislation and the local authority's policies, procedures and standards.

9. Social workers carry out their professional tasks on behalf of the local authority which is responsible for the conduct and management of individual cases. They require knowledge of child care and child development, relevant legislation and local authorities' statutory responsibilities, local policies and procedures and the roles and functions of other relevant agencies. They require skills and experience in listening to, observing and communicating effectively with children and adults, evaluating different points of view and managing conflict in a variety of situations. Gathering information, observation and discussion with a family is the basis of the assessment of need. Social workers should tap the expertise within families and held by carers and others who know the child and make use of information and advice from other professionals and agencies, to assist decision-making.

10. Social workers are accountable to their agency for their decisions and practice. The social work manager's role is to supervise and support individual staff and to help them reach decisions about individual families. Social workers need speedy access to managerial advice and consultation when necessary. Formal sessions of

professional supervision provide a means of reviewing action taken on all cases and discussion of complex or difficult decisions. Cases requiring high levels of resources and those likely to have far-reaching implications for the local authority may call for the involvement of more senior staff. Some cases, of children who are looked after by the local authority, will be subject to formal reviews. Where a referral may involve child protection, the social worker should discuss this with a senior colleague at an early stage. Social work staff must receive appropriate professional supervision and agency support. This is particularly necessary when assessing risks to children and making decisions about how best to help a child and family. All key decisions about cases should be recorded so that progress can be monitored.

11. Assessment, decision-making and direct work with families should be underpinned by Council policies and procedures which describe how local authorities expect their staff to undertake their tasks. These help local authorities to

- provide families with a consistent service that takes account of local circumstances
- manage and allocate resources appropriately according to Councils' priorities
- make sure that staff are accountable to Council members and to the public for their actions
- fulfil their statutory obligations.

12. Many local authorities have defined standards describing the level of service which they will provide and how they will deliver their services. Standards inform the public of what they can expect of local services and provide benchmarks for staff and managers, against which service performance can be measured. Local authorities should set standards covering the services they arrange and deliver, including standards for screening and assessment.

13. Although social workers operate within a framework of Council policies this is not inconsistent with the exercise of professional judgement by individual social workers. In any single case there may be an area within which professional judgement has to operate and where the best course of action may not be found solely by reference to policies or procedures.

Screening Referrals

14. When the local authority receive a referral they may need to make preliminary inquiries for further information in order to decide the most appropriate response. There is a range of options in response to a referral

- provide advice or information and take no further action when the task is completed
- refer the family to another agency or service
- seek further information from the family or others
- offer a service, for example allocation of a social worker to visit the family or provide a place in a day care service
- undertake an assessment of the child and family's needs in order to inform future decisions
- make enquiries under local child protection procedures, or

- undertake a joint investigation into concerns about a child's safety or welfare with the police.

15. When referrals are received local authorities will need to reach a view on the nature of a child's needs and what services, if any, should be provided in order to promote or safeguard the child's welfare. Systems for receiving and processing referrals should be simple and accessible, so that families can obtain help promptly. All referrals, including those which are not urgent, should be acknowledged quickly with an indication of when a response will be made.

Assessing Individual Needs

16. When a family has asked for their child's needs to be assessed or a problem has been identified that requires assessment, the local authority should gather sufficient information to enable a judgement to be made about those aspects of the child's health, welfare or development that require some help, and what services, if any, they should offer. An assessment involves gathering information purposefully, to enable the social worker to identify a child's needs within his or her family and community, and help the family find ways of addressing difficulties so that a child's needs can be properly met. Assessments will vary in the degree of complexity and information required, and in the time they will take to complete. An assessment should focus on a family's strengths and skills as well as difficulties. Some assessments will take relatively little time and can be carried out by a social worker collecting and evaluating information from a small number of sources; others may be more complex and may take considerable time, involving meetings with family members and consultation and meetings with other professionals. Between these extremes can come a range of different levels of involvement. The results and outcomes of assessments should be written down and a record made available to families.

17. In order to minimise the number of assessments of individual children the local authority should consider assessing a child's needs for the purposes of this Act at the same time as any assessment under other legislation

- the Education (Scotland) Act 1980
- the Chronically Sick and Disabled Persons Act 1970
- the Disabled Persons (Services, Consultation and Representation) Act 1986
- any other relevant enactment.

18. There is a range of assessment frameworks for practitioners, which are useful in different circumstances.¹ Some authorities have developed their own local frameworks and guidelines for assessment. No one framework covers all situations and practitioners should adapt frameworks to meet the circumstances of individual families. The application of any framework should draw upon knowledge of the research and professional literature of social work and other disciplines and the worker's own practice experience. The practitioner should critically evaluate any model framework for its appropriateness to the needs of the case.

19. Some families will include children who are at risk of significant harm. When a local authority suspects that a child is suffering, or is likely to suffer, significant

1 For example see *Protecting Children - a guide for social workers undertaking a comprehensive assessment* HMSO 1988

harm they should make inquiries under local child protection procedures. If inquiries indicate reasonable grounds to believe or suspect that a child is at risk of significant harm the local authority may apply for a court order authorising action to protect or assess the child. Guidance on measures for the protection of children in emergencies, where the local authority is not able to apply immediately for a court order, is set out separately. Alternatively, the local authority shall refer the case to the Principal Reporter where compulsory measures of supervision may be required.

Sections 55, 57 & 76

Section 53

20. In all cases, including emergencies, where a child is referred to the social work department because of concern about his or her safety or welfare, the social worker receiving the referral should explore the information carefully. The referrer may be worried about the consequences of talking to the social work department about his or her concerns and may require explanation of the social work department's duties and responsibilities towards children and families. In all but emergency situations, where the child is believed to be in immediate danger, the social worker should gather and clarify information before acting. Even in emergencies the initial assessment of information should be discussed and endorsed by a social work manager. The social worker and relevant senior colleagues must decide which agencies to consult and whether to make inquiries under local child protection procedures. They should consider whether to discuss the referral with the police and what form further inquiries or investigation should take. The police may have information which leads them to discuss with the social work department whether there needs to be a joint investigation. These decisions are complex and child protection procedures should support a measured response to the range of referrals of children who may be at risk, keeping the welfare of the child as the paramount consideration in decision-making.

21. Local procedures should be flexible so that, as additional information becomes available, families can be diverted away from the child protection system as soon as this is no longer appropriate to the needs of the child or, on the other hand, brought into the child protection system if that is necessary. Child protection inquiries may indicate that the child does not need protection but the child or family still has a need for other services. A child or family's eligibility for help or services should not depend solely on whether or not the child is perceived at that time to be at risk of harm.

Delivering Services

22. In arranging services to meet the assessed needs of individual children and their families local authorities may use an existing resource or commission services from other local authorities or statutory agencies, the voluntary sector or other agencies. In providing services to safeguard and promote the welfare of children local authorities should

- work in partnership with families and promote the upbringing of children within their families so far as this is consistent with safeguarding and promoting their welfare
- listen to children and take into account their views
- have regard to issues of race, language, religion and culture
- promote links between children and their families, including extended family, where children are looked after by the local authority away from home.

23. Achieving partnerships with parents and children in the planning and delivery of services to children requires that

- they have sufficient information, both orally and in writing, to make informed choices
- they should be aware of the consequences of decisions they may take
- they should be actively involved where appropriate in assessments, decision-making meetings, care reviews and conferences
- they should be given help to express their views and wishes and to prepare written reports and statements for meetings where necessary
- professionals and other workers should listen to and take account of parents and carers' views
- families have access to a complaints procedure
- families have access to independent advocacy when appropriate.

24. When assessing children's needs and providing services to the child or his or her family, the local authority should have regard to the child's religious persuasion, racial origin and cultural and linguistic background, as far as this is practicable. This requires that

- social workers should identify these aspects of a child's experience and identity
- assess their significance for the way in which the child's needs can be best met.

If workers are unfamiliar with a child's language or racial and cultural background, the local authority should

- consider the need to use an interpreter, and
- identify sources of information and advice which will inform social work and other assessments and decisions about the help they may offer.

Local and national interest groups, local cultural and community organisations and other local authorities will have expertise which workers might use.

25. Family support services for children living at home should embrace day care and home care services. These may include home helps or family aides, family centres offering child care, support to parents and education to increase parenting skills. In addition access to suitable housing, occupational therapy, special equipment and adaptations to help children with special needs and respite services may be appropriate.

26. Social workers play a major part in providing support services to children and young people in need and their families, working in a variety of settings, including local social work department offices, GP surgeries, clinics and hospitals, or specialist projects and services. They offer advice, guidance and counselling, geared towards helping parents develop their skills and strengths and promoting good relationships between family members where these are in difficulty. Social workers are skilled in talking with children and their families, assessing areas of need, identifying ways in which families can improve their situation and circumstances and negotiating plans

and agreements with families. Children and families experiencing serious difficulties can be helped by regular and reliable contact with an allocated social worker, who can get to know children and their parents well, who will be able to use a range of social work skills and methods to help children and families tackle their problems and respond helpfully to crises if they occur. They can also mobilise other resources on a family's behalf, for example, by arranging the provision of other services, such as day care, practical assistance such as a family aide or home help, adaptations, equipment and, in exceptional circumstances, financial help either directly or by liaising with other organisations such as the Benefits Agency. Social workers can also link families with other services such as housing, specialist health and education services.

27. Social work involvement and support should be directed towards helping children and their families to achieve specific goals or outcomes. Social workers will have a role in co-ordinating services provided by other departments and agencies, and will be responsible for ensuring that progress is regularly reviewed and goals are adjusted according to the family's needs and wishes, and changes in their circumstances.

28. Authorities may provide accommodation for the child if asked to do so and if this would safeguard or promote a young person's welfare. They may provide accommodation for a young person aged sixteen or over if he or she requests it, even if his or her parents do not agree. Chapter 4 provides guidance on the role which provision of accommodation (under section 25) can play in promoting or safeguarding the welfare of children. Local authorities have a duty to provide advice, guidance and assistance for young people who were looked after by a local authority when they reached school leaving age, at least up to the age of nineteen and they have the power to provide this, if necessary, up to the age of twenty-one years. Services to meet the needs of older children might include groups for young people, counselling and befriending services, and practical help through independence training schemes and community projects for young people at risk or in trouble.

Section 25(2)

Section 25(7)

Section 29

29. Once a need has been identified, the local authority should consider whether assistance is appropriate, and if so should plan with the family how best to meet this need within the resources and services available. Where the local authority allocates resources to arrange a service, the plan should identify what the service will do, what others are expected to do to make the plan work and arrangements and timescales for reviewing how well the plan is working. This plan should form the basis of an agreement with the parent or carer of the child and should be confirmed in writing by the local authority.

30. If the local authority is significantly involved with a child in need and providing substantial services, the local authority should regularly review its plan with the child and family, in order to make sure that the service continues to meet the child's needs and remains the most appropriate use of the local authority's resources. Some children in need who are receiving services will be looked after by the local authority and therefore subject to statutory requirements for planning and review, which are addressed in other chapters of the guidance.

Planning Children's Services

Section 19 1. One of the major proposals in the White Paper "Scotland's Children" (Cmd 2286) was that local authorities should adopt strategic planning, in order to improve the quality of services and the use of available resources to meet the needs of children in their areas. This proposal, which was subsequently enacted in section 19 of the Children (Scotland) Act 1995, requires local authorities to prepare and publish plans for children's services.

2. This guidance conveys the directions by which the Secretary of State directs local authorities to prepare and publish, review, modify and substitute plans under the Act. It also provides guidance on the corporate preparation of children's services plans by local authorities. The guidance sets out a framework on which authorities should prepare their initial plans and subsequently develop them. It is issued in terms of section 5(1A) of the Social Work (Scotland) Act 1968 as amended by sub-paragraph (3) of paragraph 76 of Schedule 13 to the Local Government etc (Scotland) Act 1994 and sub-paragraph (4) of paragraph 15 of Schedule 4 to the Children (Scotland) Act 1995.

Legislative Provisions and Power of Direction

Section 19 3. Section 19 lays a duty on local authorities to prepare and publish plans for relevant services for children within their areas. The definition of such services extends widely to those provided under Part II of the Act or under the enactments mentioned in section 5(1B)(a) to (o) of the Social Work (Scotland) Act 1968. Plans should focus on the needs of vulnerable children who may now or in the future require the support of relevant services. These include services for children "in need" which is defined in section 93(4)(a) as well as for children who are not so defined and whose welfare will be promoted or enhanced by the provision of such services.

Section 19 4. A range of authorities and organisations provide services for the welfare of children and their families. It follows that services plans require contributions from them. This is recognised by the requirement on local authorities set out in section 19 of the Act to consult in the preparation of children's services plans with Health Boards and Trusts, voluntary organisations, the Principal Reporter, the children's panel chairmen, housing agencies and "such other persons as the Secretary of State may direct". The requirement to consult is complemented by a duty in section 21 on other local authorities, health boards and trusts and "any person authorised by the Secretary of State" to co-operate with a local authority in the discharge of their child care functions under Part II of the Act.

Section 19 5. In exercising his power of direction under section 19 the Secretary of State has prescribed the following matters in the attached directions

- local authorities should produce and publish the first plans for 1998-99 by 1 April 1998, having carried out the necessary preparation in 1997-98, following full implementation of the Act
- plans should indicate the volume of services and expenditure planned in relation to provision by the authority (and collaborating authorities), by voluntary organisations and by the private sector.

6. A number of former regional and islands authorities produced plans for children's services which have varied considerably in scope and in detail. In addition, all those authorities had the benefit of carrying out reviews of provision for pre-school children under the Children Act 1989 which have provided useful experience in planning for the future. When preparing services plans under the 1995 Act unitary Councils will wish to build upon the broad experience accumulated by their predecessors. They will also wish to ensure that they are consistent with other areas of planning, for example, in housing and criminal justice services.

Planning -Aims

7. The Secretary of State envisages children's services plans as serving five strategic aims

- to ensure the welfare of children
- to clarify strategic objectives in relation to services
- to promote integrated provision of services and effective use of available resources
- to ensure a consistent approach to planning by local authorities
- to establish a high standard of co-ordination, co-operation and collaboration between service departments within local authorities, between different local authorities and with other agencies and organisations which have a contribution to make to effective provision of local services.

Planning -Significance and Process

8. Planning is not an end in itself; it represents an important part of the management task of local authorities. Their plans for children's services should be the basis for providing services to meet the systematically assessed needs of children and their families in the area. Plans are a means to providing better services and to making better use of available resources. The exercise of planning should result in a strategic and authoritative view of the priorities for provision of children's services and the objectives for meeting these priorities.

9. Plans should cover three financial years, with the first aligned to the authority's budget planning. Thereafter they should be rolled forward and reviewed each year, with a full review of plans every three years.

10. Priorities and objectives should be related to a realistic view of the resources likely to be available, reflecting the budgets determined by individual authorities for the year ahead and an informed assessment of resources for the two years beyond that.

11. Social work departments' services will inevitably constitute a major part of plans, but their effectiveness in addressing the needs of vulnerable children depends also on contributions of other services - particularly those provided within other departments of local authorities (for example education, housing and recreation and leisure), those provided by the Police and those provided by Health Boards. Education services in particular have an essential role in providing services for vulnerable children and should do this in partnership with social work departments. In the formulation of draft plans therefore education departments should work very closely with social work departments.

12. Each local authority should produce a plan which is a corporate document, including contributions and commitments by the departments concerned with children and similar contributions and commitment by other collaborating agencies and voluntary organisations as planning partners. The process of producing a plan should promote joint policies and practice in the delivery of services to children and their families.

13. The preparation of plans will therefore require a deliberate effort in collaboration and joint working. This is not however new to child care - it has been increasingly adopted in child protection and fostered in local areas by Child Protection Committees. In relation to community care, joint working is an established feature of business carried out by social work departments and Health Boards and Trusts.

14. Planning on such a scale calls for leadership and direction at the highest level within local authorities. There would be considerable advantage in Chief Executives assuming overall corporate responsibility for plan preparation. In practice they will normally assign to social work departments a lead role in developing plans and discharging the executive tasks of consulting, co-ordinating and drafting. In carrying out these tasks they would act in the name of the Chief Executive.

Plans -Form and Style

15. As important strategic documents children's services plans should be clear and comprehensible not only to providers of and contributors to services but also to users and others within the area. They should represent a comprehensive and coherent view of services, not an inventory for consultation by users. It follows that they should not be over-detailed, bulky or cumbersome. Plans should represent an overview; the lengthier the document the more difficult to present a clear overview. Chief Executives may wish to bear in mind relevance, overlap and proportion in gathering and presenting the material which goes into the formulation of plans.

16. In some aspects, the plan may need to be backed by short descriptions, definitions, explanations or tables, as necessary to understanding its main text. These would be prepared by the appropriate agencies and departments. Wherever possible they should be consigned to supporting annexes.

17. Local authorities are asked to consider developing analyses of local needs and services in order to complement children's services plans and to demonstrate how services are distributed to meet needs within their areas. Such analyses would show the distribution of services accessible to local people and would be consistent with action to decentralise the management of various services.

Needs and Services

18. At the centre of planning is identification of needs, their main features, diversity and relative priority for services. Assessment of needs will include needs not presently met, gaps in service provision and opportunities for developing partnerships. As an aid to local authorities in formulating plans Annex A sets out needs, expressed in terms of children and their families, which local authorities may find useful as a starting point, to identify the full range of local needs which they have to meet and their relative significance. Authorities may well decide to include other categories of need or they may wish to combine some of those listed.

19. From needs, authorities will wish to define, redefine or develop the services which will figure in action programmes. Annex B lists services which may also be useful to authorities, with a brief definition attached to each. Some are identified with social work departments, but others are associated with other services - notably health and education. Others may be developed by voluntary and private organisations. Authorities are already required to review day care services for young children under the Children Act 1989. It would be appropriate to incorporate into their plans a summary of the main conclusions of the statutory reviews of services for young children. They should draw on their reviews in making the necessary references to day care in their plans.

20. Authorities and their planning partners may wish to adopt formulations and groupings of services which seem more suited to their areas for the future. Annex B is offered as a generally useful starting point.

Consultation

21. The Secretary of State sets great store by the consultation which should be followed in preparation of the plan and which should enable each local authority to take full opportunity of what other agencies and organisations have to contribute to local services. Consultation should be seen as a significant part of preparation and development of plans.

22. It is also necessary for authorities to take into account views of users - and potential users - on existing services, their adequacy and quality and perceived gaps in provision. Children and their families who are currently using or receiving services should be consulted, together with those who have been previously in receipt of services. The Act also required the authority to consult with "such voluntary agencies as appear to the authority to represent the interests of persons who use or are likely to use relevant services".

23. It is for each authority to decide how to discharge its duty to consult about plans and to take views of users and potential users. The collection of user views and consultation on present and perceived future needs should form an everyday part of service delivery. In analysing views of users, authorities should make use of information received from the analysis of complaints, inspections, Children's Rights Officers, advocacy services, contacts with voluntary agencies involved in representing children and their families' views and any surveys undertaken. Before consulting on content, they may wish to consult first on the form of the plan; the balance of provision between public,

voluntary and private sectors; the means of taking views of children and their families; and how to take account of racial, religious and cultural issues. Meetings, questionnaires and surveys may be considered for this purpose. After completing its plan, the local authority is required to publish it. How best this can be done is for each authority to decide, in the light of its consultations and the process of preparing the plan.

Section 20 24. Plans will be of particular use for management purposes. However section 20 places a responsibility on local authorities to publish information about the range of services they provide in respect of children. This latter duty places equal importance on users being informed about the services that are available. Users are children and families who currently call on services or are likely to do so.

Plans -Scope and Content

25. The time-span for each plan should be three years; it should be reviewed and rolled forward each year; and every three years it should be fully reviewed. In rolling forward plans, Chief Executives will have to relate them to the budgetary decisions made for successive years by the local authority. The local authority is required by the Secretary of State's direction to produce its plan by 1 April preceding the three year period to which they relate.

26. There is no ideal form of plan suited to every local authority. But to assist authorities in preparation of their plans Annex C is attached as a template which they may find useful and which endeavours to list the main elements which a plan should cover as a strategic management document.

27. A plan should begin to address "Where are we?" with summaries of local needs; of the services provided for children directly or indirectly by the local authority; and of the current policy and service priorities.

28. Then it should address "Where do we want to be?" by setting out forecast needs for the three year period of the plan; the services to be changed or developed to meet this forecast; and any revisions of policy and service priorities.

29. Next, "What do we need to get there?". The plan should set out proposed action for each year of the plan period; the resources needed to be devoted to that action; and the objectives or targets which authorities are to meet. This part should also deal with the workforce, personnel development and training, IT and other resource requirements in which the local authority will need to invest in order to implement their action programmes successfully.

30. The final part of the plan should be directed to answering "How will we know where we have got to?". This should set out the databases from which management information is drawn to monitor and review progress in action programmes and to define the performance indicators by which past and future progress to achievement of objectives can be measured.

31. In preparing their plan each local authority should constantly view children and their families as the focus of provision and in doing so should ensure that it

both influences and incorporates the strategies which have been or are being adopted by other departments and services, for example, child health strategies and employment strategies for sixteen to eighteen year olds.

32. To underpin the development of plans local authorities should ensure that they have in place sound management information systems which relate wherever possible to systems maintained for example by Health Boards. These should embrace effective data collection, processing capacity and analysis.

33. The key information which both local authorities and The Scottish Office are likely to require with the introduction of the Act is currently being examined by a joint working party whose proposals will set out a standard approach to management information. But local authorities are free to collect additional information which seems necessary to meet their particular needs and circumstances.

Supply of Services

34. Authorities may plan to provide a service directly, in association with other authorities or by purchase from voluntary organisations and private concerns, depending on the view which they take of what best meets local needs and what constitutes best value for money. Where purchasing constitutes a significant part of their plans for provision of children's services, they should supplement their plans with a statement of their purchasing strategy.

Collaboration between Authorities and Agencies

35. Children and their families have needs which call for services from a range of different local authority departments, including social work, education, and housing, and other agencies, such as primary health care and hospital services, the Benefits Agency, police and voluntary organisations. Local authorities, Health Boards and Trusts and any person authorised by the Secretary of State have a duty to comply with a request by a local authority for help in the exercise of any of their functions under Part II of the Act, unless to do so would be incompatible with its own statutory or other duties and obligations, or would unduly prejudice the discharge of any of its functions.

Section 21

36. Some authorities will need to consider how best to make sure that families have access to specialist services which are not available locally or which would not be cost-effective for the local authority to provide directly itself. They may undertake to provide or commission some services jointly with other authorities or agencies, or purchase particular resources from other authorities. Authorities should co-operate with each other and involve the voluntary and independent sector in planning specialist provision which is likely to cross local boundaries. This should help to make available, cost effectively, a range of specialist services to support children in need and their families with complex problems, for example where parents suffer from mental illness or children present behavioural difficulties.

37. Local authorities have a range of duties and powers under the Act and their effective discharge depends upon corporate responsibility and co-ordination

across departments. Departments providing services to the public should be aware of the functions and responsibilities of other departments and ensure that their policies and practice are consistent and well co-ordinated. In particular they should avoid making repeated requests for, or verification of, information which they have already given to staff in other departments.

ANNEX A

Needs of Children

1. The list which follows outlines the main needs of children which call for services and which should therefore be identified as a first step in planning services. The list is expressed in terms of children but they are as a rule associated with their families of which other members may also have needs and individual children may span more than one category of need.
2. The children listed will include children who are and who are not in need in statutory terms. If they do require assistance their needs may be special and require particular planning which should have regard to religious persuasion, racial origin and cultural and linguistic background.
3. The list is indicative rather than exhaustive. It is certainly not exclusive. Inevitably it shows areas of overlap and apparent omission. For example, children who have been adopted are included, but no special mention is made of children who may need to be adopted or who are in the process of being adopted. These children would be children looked after. Family conditions, like family breakdown or poverty and deprivation, may be factors underlying the needs in the list which follows.

Children who are looked after by the local authority

Children who need protection

Children/young people who are no longer looked after by the local authority

Young parents

Children who have disabilities/special needs (eg physical or learning disabilities, sensory impairments)

Young carers

Children who have been adopted (and those who are in the process of adoption)

Children/young people who misuse substances/alcohol

Children/young people who are affected by HIV/Aids

Children/young people who are homeless

Children/young people in poor housing

Children who are carers for relatives and who are in households affected by disability

Children who live in violent environments

Children whose parents suffer from a mental illness

Children whose parents misuse substances/alcohol

Children whose health or development is suffering

Children whose educational development is suffering (including those excluded from school)

Children who have emotional, behavioural and mental health problems

Children/young people who are in conflict with the law because of offending behaviour (including those who offend against other children)

ANNEX B

Services for Need

1. Services may be provided directly by local authorities or commissioned by them from the voluntary or private sector. They include supportive and preventive services.
2. The voluntary and private sectors also provide services directly.
3. Other local authority departments and agencies also provide a range of statutory and non-statutory services for children and their families that need to be considered in the planning of services.
4. For convenience services are grouped under broad service headings.

Social Work

Social work and advice services

Fieldwork

Advice and information

Assessment

Counselling for problems, including for drugs and alcohol misuse

Specialist counselling for disability

Advocacy

Placement services

Residential care

Foster care

Adoption

Post-placement support

Secure care

Respite care

Shared care

Supported accommodation

Family support services

Day care/playgroups/childminders

Family centres

Home care/family aides

Accommodation/housing

Direct services for young people

Befrienders

Group work

Outreach support
Counselling
Aftercare
Community projects for young offenders

Health

Health surveillance - pre-school and school age
General practice
Health visiting service
District nursing service
Hospital paediatric services
Community paediatric services
Medical care for children looked after by the local authority
Health care in child protection - prevention, assessment, support
Health care for children with special needs - assessment, treatment, therapy services
Specialist nursing services
School nurses
Liaison nurse specialists
Respite care services
Health promotion services
Psychological/Psychiatric services

Education

Pre-school education
Educational psychologists
Educational support for children in hospitals
After and out-of-school care
Community education
Day and residential special schools
Special units for excluded children
Provision for children with learning difficulties
Special needs services
Specialist support technology services
Home liaison teachers
Guidance teachers
Classroom teachers

Designated teachers (child protection)

Learning support teachers

Psychological service

School liaison groups

Police

Child protection

Juvenile justice and young offenders

Community policing and crime prevention

Children absent from home or a placement

Domestic violence

Other Local Authority

Youth workers/community workers

Play services

Employment/career services

Services to minority ethnic communities

Libraries

Advice and information

Housing accommodation and advice

Supported accommodation

Hostels

Other Services

Scottish Children's Reporter Administration

The Courts

ANNEX C

Key Elements for Planning

Make it clear to whom the plan is addressed.

Make clear how other local planning documents relate to the main written plan and where they can be found.

Describe how it has been produced and who has been involved in the processes of consultation, collaboration and, where appropriate, joint production of the plan.

Explain what its status is.

State its intended strategic timescale.

Explain its linkages with other plans and reviews (eg community care plan, section 19 (under eights) review).

Be easy to read and follow, with a clear structure and contents list.

Consider how it conveys language and terminology so that it is understood in the same way by all agencies.

Indicate how it is being distributed and the various media through which it is made available (eg which languages, Braille, tape or digitalised form).

Clearly define its purpose in terms of

- strategic management of services
- business planning
- commissioning strategy
- quality standard-setting
- authority's enabling function.

Be clear as to its scope

- services for SWD priority groups
- services for children in need
- promoting the well-being of children.

Relate the principles and values of the participants in the plan to its purpose and scope.

Review "Where are we now?"

- mapping the current needs of the priority populations
- mapping the current services to meet these needs
- identifying current policies, objectives and strategies for each of the priority populations.

Define “Where do we want to be?” at the conclusion of the current plan

- forecasting future needs of the priority population
- forecasting priorities for future supply to meet those emergent needs
- logically linking the forecasting of future need and the forecast of priority future supply.

Detail “How are we going to get there?” by reference to

- policies and objectives
- strategies and targets
- priority developments.

Detail “What do we need to get there?”

- action plans
- resource implications
- costs
- staffing
- training
- equal opportunities policies.

Identify “How will we know where we have got to?”

- monitoring and review structures
- define performance indicators by which to evaluate progress
- demonstrate how the outcome from monitoring links into subsequent planning processes.

Providing Information about Services

Section 20

1. Local authorities are required to prepare and publish information about relevant services which they provide for or in respect of children, including services for disabled children or children otherwise affected by disability. The Secretary of State has directed that local authorities publish such information by 1 April 1998. This date is the same as that by which their first children's services plans must be published. Information should include details of services provided by voluntary organisations or other persons if these are services which the local authority also has the power to provide as relevant services, and if the local authority considers it appropriate to publicise them.

2. Relevant services are services for children provided by a local authority under, or by virtue of, Part II of the Act, or any of the enactments mentioned in section 5 (1B) (a) to (o) of the Social Work (Scotland) Act 1968. These enactments include legislation relating to adoption, fostering, disability and divorce. Relevant services include those for children in need and children requiring compulsory measures of supervision because of their need for protection, because of dangerous or offending behaviour or family breakdown. For example published information could describe local provision for accommodation, day care, advice, assistance, counselling and the exceptional circumstances in which financial assistance might be made available. The local authority should consider specific information relevant to the particular needs of disabled children or those affected by disability. Information about services provided by other agencies in the voluntary and independent sectors will give families a clearer picture of what help might be available to them and may enable them to exercise greater choice in deciding where to go for advice and assistance.

3. Local authorities should provide general information about services available, but also make available more specific information for recipients or users of specific services, for example, for parents of children in foster care. There will be a need for information for children. The social work department may be well placed to co-ordinate the preparation of public information but the task is a corporate one for the local authority. Other departments will make an important contribution or prepare their own information about services for children. In publicising particular services the local authority should include information about what needs they are designed to meet and how families can gain access to them.

4. Many local authorities now publish the standards of service that the public can expect to receive from their local departments. Statements of standards are benchmarks against which users can assess the quality of the service they receive.

5. Families who use services are themselves a valuable source of information about ways to make public information accessible and interesting. Both adults and children can inform planners about the kinds of information, layout, language they find helpful. Groups which work with or represent service users and disabled people can

make useful comments on the kind of information which is needed and should be consulted. Local authorities should also consult members of ethnic minority communities about how to present information about services, local needs for translation of public information and interpreting services, and distribution so that information reaches its targeted audience. Their information needs may be different from those of the majority community.

6. Information should be

- easy to read and understand
- reviewed and updated regularly to ensure accuracy
- accessible in a range of formats which take into account the needs of those with communication difficulties, visual impairment or those who cannot read
- available in languages other than English and in content should reflect the needs and concerns of different local cultural and religious communities.

7. Information should be made available in a variety of public places used by children and their families, including GP surgeries, children's hearings centres, hospital outpatient departments and clinics, schools, libraries, community centres, nurseries, citizen's advice bureaux and law centres, Benefits Agencies and places of worship, where appropriate. There may be a need to target particular settings to reach children who are disabled or affected by disability or particular communities. Local authorities might consider producing a local handbook of information, with users, other statutory agencies and local voluntary and independent providers.

Providing Accommodation

Provision and use

1. The Act provides for local authorities to offer accommodation for a child as a service which parents may seek to take up voluntarily as long as this is in the best interests of the child. Local authorities have a duty to provide accommodation for a child when

Section 25

- no one has parental responsibility for him or her
- he or she is lost or abandoned or
- the person who has been caring for him or her is prevented, whether or not permanently and for whatever reason, from providing him or her with suitable accommodation or care.

“Accommodation” means accommodation provided for a continuous period of more than twenty-four hours.

2. In addition the local authority has the power to provide accommodation for any child within their area if this would safeguard or promote his or her welfare.

Section 25(2)

3. The local authority also has the power to provide accommodation for a young adult who is at least eighteen years of age but not yet twenty-one years old if they consider that to do so would safeguard or promote his or her welfare.

Section 25(3)

4. The local authority cannot provide accommodation for a child if any person who has parental responsibilities and rights in respect of the child and is willing and able to provide, or arrange, alternative accommodation for him or her, objects. In these circumstances if the child is already accommodated such a person may remove the child from local authority accommodation at any time, unless the child has been accommodated for a period of at least six months, in which case fourteen days notice in writing must be given. The power to remove the child does not apply if he or she is over sixteen years of age and agrees to being provided with accommodation, or if there is a residence order in respect of the child and the person(s) in whose favour the residence order is made have agreed that the child should be looked after in accommodation provided by the local authority.

Section 25(6)

5. The local authority may provide accommodation by placing the child with a family, other than his or her own family within the meaning of the Act, a relative of the child or any other suitable person; placing him or her in a residential establishment or making any other appropriate arrangement. Such an arrangement might entail making use of services that would normally be available to a child cared for by his or her parents. Accommodation may be provided as part of a package of services designed to support the parents and increase their capacity and confidence to continue meeting their child's needs and resume his or her care.

Section 26

Respite Services

6. Respite services are an important part of the range of services that should be available to help families with children in need. They are particularly relevant to helping children with disabilities but can also meet other needs, for example to provide a child's parents or carers under stress with a break where the absence of such support might lead to breakdown of the usual arrangements for the child's care. Respite services can extend the range and quality of a child's experience and give him or her opportunities to develop increasing autonomy and independence. Existing guidance on respite care arrangements for adults sets out a framework for the development of local respite care services and is applicable to developing respite services for children.¹

7. Respite services for children outside their own home will include alternative family care, perhaps in fostering schemes, residential care or provision in day care and other community settings. Creative use of provision might include the development of schemes to enable a family to be given residential respite together, to enable parents to have a break from care and other responsibilities without necessarily being separated from their child.

Section 25
Section 17(6) 8. Where for the purpose of respite a child stays away from home for a continuous period of more than twenty-four hours he or she is being provided with accommodation and the local authority has additional duties towards him or her as a child who is looked after by them.

1 Circular No. SWSG 10/96 DD 7/96

Day Care Services

1. Local authorities have a duty to provide day care for children in need within their area who are aged five or under and who have not yet started school. They may also provide day care for such children who are not deemed to be children in need. In addition local authorities have a duty to provide appropriate care for school-children in need within their areas outside school hours and during school holidays, and a similar power in respect of school-children who are not in need. Children in need entitled to day care services include children with and affected by disabilities. A local authority may also provide facilities, including training, advice, guidance and counselling for those who accompany children whilst they are in day care, such as parents or other carers. *Section 27*

Day care provision

2. Day care services offer opportunities for children to broaden their experiences and learning, and to enhance their social and educational development. Such services may also benefit parents. Services should be responsive to the changing needs of children and their families and should be accessible, reliable and flexible to meet the needs of parents and children, and provide good and safe basic care.

3. Local authorities and other providers should work together to make accurate information about local day care services available so that all parents can make informed choices about care for their child. Local authorities might publicise services in child health clinics, libraries, GP surgeries and other facilities routinely used by families with young children. Information should be made available in a range of formats and media, in other languages, in Braille and on tape. Local authorities might also publicise the results of their statutory triennial reviews of day care services perhaps in summary form for the public.

Planning day care services

4. Each local authority must determine the most effective way to fulfil their duties and to exercise their powers to provide day care services in their area, according to local circumstances, demand and available resources. Policies and resource priorities should be included in children's services plans developed in consultation between the key departments and agencies, including the voluntary and private sector and users. Plans should aim to promote a "mixed economy" of provision between local authorities and other providers registered by the local authority.

5. Suitable day care provision should be available for children whose needs are related to disability. Children who have a disability or special educational needs should, where possible, have access to local mainstream provision appropriate for their needs as well as to more specialist provision. Guidance on day care provision for children with disabilities is contained in Chapter 6 of this volume.

6. It is for each local authority to determine how far they exercise their powers to provide day care services for children who are not in need. These services have an important role to play in preventing child abuse and neglect and avoiding the need for compulsory measures of supervision. They can widen the experiences and opportunities available to children and young people, particularly in areas of high unemployment and multiple deprivation. An authority may wish to target scarce resources upon areas where there are likely to be high numbers of children in need, and identify the appropriate resources for that area. Parents and children should be informed, consulted and where possible directly involved in the development of day care services.

7. Day care services should have regard to the racial origins, cultural and linguistic backgrounds and religious persuasion of children using the service and seek to reflect the ethnic make up of the communities they serve, by recruiting staff of local ethnic minorities where possible, and by integrating relevant aspects of these minority cultures into the routines and activities of the services. For example, staff should be able to identify and meet the needs of children from different local ethnic and religious communities and the toys, pictures, food provided, games and festivals should reflect the diversity of cultures and communities in Scotland. Providers and staff should promote an environment in which children can develop an understanding of their own and others' history and heritage and an appreciation of difference in other children and adults.

Registration, inspection and review of day care services

*Part X Children Act
1989*

8. Local authorities have duties to regulate and review local day care services for children under eight. They are required to maintain a register of day care providers and childminders. Registration is a means of ensuring that all services reach acceptable minimum standards and that children receive satisfactory care and protection in these settings. Local authorities are also required to inspect domestic households used by registered childminders and registered non-domestic premises in which day care for children under eight is provided. The local authority must inspect these facilities at least once every year. Guidance relating to the Children Act 1989 was issued in 1991.¹

*Section 19
Children Act 1989*

9. Under the 1989 Act local authorities are required to review their day care services for children under eight at least once every three years. Information about the level, organisation and delivery of services should be collated and evaluated in the light of the local authority's policies and standards for the development of the service. Reviewing services requires consultation with providers, referrers, families and children themselves. The standards expected of day care services should be of at least the same quality whether they are managed by local authorities or an independent provider.

10. The Government's Pre-School Education Initiative introduces vouchers which parents may use to purchase education services of their choice for children in their pre-school year. Pilot schemes began in four areas in August 1996 prior to the scheme being extended nationwide. The Pre-School Education Initiative will not remove the duty to provide day care for children in their pre-school year who are in

¹ *Regulation and Review of Childminding, Day Care and Education Services for Children Under 8: The Scottish Office, 1991.*

need, but authorities may wish to take account of the extent to which attendance at pre-school education services addresses the needs of such children.

Voluntary and independent providers

11. Local authorities should work closely with the voluntary and private sectors in developing the range of provision in their areas. Local authorities have a responsibility to establish and monitor standards throughout the day care sector, through their registration and inspection functions, in keeping with their overall strategy for services to children in their area. Independent organisations are often able to be creative in developing services. They have much to contribute to the range and pattern of services in each area and local authorities should ensure that local providers are consulted and involved in taking forward developments in policy and practice. In rural and isolated areas, with limited access to transport and other services, small scale provision reliant on individuals and volunteers is often the primary source of day care provision and local authorities should encourage these initiatives.

Childminders

12. Childminders offer care for children in their own home, if registered, or the child's home. In recent years childminding has grown faster than any other aspect of day care services. Social work departments can engage childminders to provide day care, or can subsidise or pay for places for children in need, either as an established service or as part of an individual package of support. This form of provision is generally welcomed by parents because it is usually local, adaptable and the childminder may be a source of help and support for parents themselves. In some rural areas childminding may be the only form of day care available.

13. Local authorities should ensure that childminders registered in their area are equipped and trained to provide appropriate care for their charges. Childminders who take on more complex tasks with vulnerable families will need access to training which includes attention to play and child development, caring for a child with disabilities, what to do if worried about a child's welfare at home, first aid, health and safety and how to address needs related to race, culture, language and religion.

Training for providers

14. The local authority has an important role to play in ensuring that staff working with children in their area have access to good quality facilities, including training. A local authority may provide facilities such as training, advice, guidance and counselling for those who provide day care for children. Local authority training for staff may include local independent and voluntary agency providers, staff and volunteers. Some authorities have developed under eights or early years forums with representation from a wide range of interests and agencies. These can be useful vehicles for developing and implementing a local training strategy.

Section 27(2)

15. Volunteers need support and training to maximise their potential for helping in communities. They must be selected with care and criminal records checks should

be made on volunteers with access to children. Where volunteers are employed in organisations registered by the local authority to provide day care, registration and inspection should include attention to these aspects of the agency's operation.

Children And Disability

Introduction

1. The Act introduces a new legal framework for assessment, services and support to children with disabilities, children affected by disability and their families. Services for these children should be designed to minimise the adverse effects of disability and to enable them to lead lives which are as normal as possible. Specific provisions relating to children with or affected by disability do not stand alone. The general provisions in the Act apply equally to these children as others.

Section 23

2. This guidance covers all local authority functions under the Children (Scotland) Act 1995 as these relate to children with disabilities or affected by disability and refers, where appropriate, to other guidance for the implementation of the Act, and other legislation such as the Social Work (Scotland) Act 1968 as amended by the NHS and Community Care Act 1990, the Chronically Sick and Disabled Persons Act 1970, as amended, the Education (Scotland) Act 1980, as amended, the Disabled Persons (Services, Consultation and Representation) Act 1986 and the Carers (Recognition and Services) Act 1995. The guidance on provisions in the Act for local authorities' support, services and information to children in need and their families also applies to children with disability or affected by disability. Other guidance on child protection orders, children who are looked after by a local authority, and adoption will be relevant for children with or affected by disability in those circumstances.

3. Local authorities have a duty to safeguard and promote the welfare of children in need in their area and, so far as is consistent with that duty, promote the upbringing of children in need by their families by providing a range and level of services appropriate to the children's needs. The Act refers to a child in need as being in need of care and attention because

Section 22

Section 93(4)

- he or she is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him or her, under or by virtue of this part of the Act, services by a local authority
- his or her health or development is likely significantly to be impaired, unless such services are so provided
- he or she is disabled
- he or she is affected adversely by the disability of any other person within his or her family.

Section 23(2)

4. When a local authority provides services to children who are disabled, or affected by disability, and their families, those services should be designed to minimise the adverse effect of the child's disability, or that of the other person, and enhance the

Section 23(1)

child's opportunity to lead as normal a life as possible. Services should be appropriate to their assessed needs. Transitional stages in children's development, such as entry to primary school, transfer to secondary school or school leaving age, are points at which the need for services and support may be particularly pressing.

Section 23(3) 5. The local authority has a duty to carry out an assessment of the child, or of any other person in his or her family, in order to ascertain the child's needs in so far as they are attributable to his or her disability or that of the other person, if asked to do so by the child's parent or guardian. It is good practice to consider any request for help made by a child directly, and assess his or her needs as required. When undertaking an assessment of a child's needs, under this section of the Act, local authorities should consider whether services available for children in need under section 22 should be provided to meet the child's wider needs, in addition to those attributable to his or her disability.

Section 24 6. In carrying out an assessment to determine the needs of a disabled child, the Act requires the local authority to assess a carer's ability to provide, or to continue to provide care for the child, when asked to do so by the carer. This assessment will help the local authority decide whether there is a need to provide or arrange additional help and support for the carer in caring for a disabled family member; it is not to determine his or her fitness to do so. Any assessment of a disabled person should take into account their family circumstances.

Section 24(1)(b) 7. The "carer" is a person who provides or intends to provide a substantial amount of care on a regular basis for that child. The carer may be a parent or any other person, provided that he or she is not employed, or volunteering for a voluntary organisation, to care for the child. This could include a child or young person who is supporting a disabled sibling at home. Young people over the age of sixteen, who support a disabled adult family member, may be entitled to an assessment by the local authority under the Carers (Recognition and Services) Act 1995. Advice on how these assessments should be carried out is contained in guidance issued on the implementation of that Act (see Community Care Circular SWSG 11/96).

Section 24(2)

Planning and Assessment

8. It is estimated that there are 33,000 children in Scotland with some form of disability. 14,285 children are recorded as having special educational needs. Children who are disabled are a diverse group and include a wide and varied range of disabilities, conditions and needs. Not all children with or affected by disability will need or want help from social work departments. Relatively few will make intensive or long-term use of social work services.

9. Local authorities will need help from local health and education services to identify the numbers of children in need who are disabled in their area. Local authorities should also take steps to identify the numbers and needs of children in their area who are affected by disability. Social work departments and their colleagues in health and education should work together to achieve a shared understanding of disability which facilitates early identification and joint working and assists each service to devise its contribution to local children's services plans.

10. The local authority itself is unlikely to provide all the services which may be needed by children with or affected by disability in an area. Local authorities should

promote and make use of the voluntary and private sectors in providing services, taking into account local circumstances. Authorities will need to collaborate with neighbouring or larger authorities, voluntary and independent agencies in planning and funding specialist services, which cannot be provided locally. A local authority may negotiate arrangements for a service or assistance to be provided by another local authority if the location of the family, or the kind of service needed, make this desirable. Local authorities may wish to set up joint arrangements for specialist services to be provided across authority boundaries.

Assessment

11. Assessments of children in need will normally be carried out by the department of the local authority which carries responsibility for social work services and functions. In assessing children's needs local authorities should take into account families' views and preferences, and consider the contribution which other statutory and voluntary agencies, for example health and education, might make to the assessment or services provided. Social work departments should make arrangements with local education departments, Health Boards and NHS Trusts, and primary care teams, for sharing information, joint assessment and provision of health, education and social work services in individual cases, in the light of the requirements for collaboration under the Act. In many cases health professionals, such as health visitors, GPs, consultant neonatologists and paediatricians will identify a child's disability in the first instance. Whichever agency is the first to have contact with a disabled child, whether social work, education or health, that agency should begin to talk with the child's family about other local assessment processes and how to obtain access to the range of services from other agencies which they might find helpful. This will ensure that families have access to the full range of local services at an early stage. Support may be needed at later stages too. Even if help is not taken up immediately it may be welcomed later on.

Section 21

12. Some of the principles and practices in care management for vulnerable adults may be of use when thinking about how to meet the requirements of the Act to assess and co-ordinate packages of services to assist children in need who are disabled. Care management practices would need to be adapted carefully to take account of the often complex circumstances of vulnerable children and their families. The field social worker retains responsibilities for supporting the child and family which are incompatible with a purely purchasing role. Policy guidance was issued by the Department of Health and the Social Services Inspectorate for England and Wales, and practice guidance was issued jointly by SWSG and the Social Services Inspectorate for the implementation of care management and assessment arrangements under the NHS and Community Care Act 1990 (see *Care Management and Assessment: Manager's and Practitioner's Guides*, HMSO 1991). Social work departments should refer to this guidance to inform the development of local systems for assessment and providing services to children who are disabled.

13. When assessing children who are disabled social work departments should, in collaboration with other agencies and professionals, identify the needs of the child in relation to his or her health, development, disability, education, gender, racial origin, religious persuasion and cultural and linguistic background. Health includes physical and mental health. Development encompasses all aspects of development including social and emotional development. The needs of brothers and sisters should be considered and provided for within any package of support

devised. Siblings may also require assessment in their own right as children affected by disability.

14. Local authorities should find ways of reducing duplication of visits by different professionals and the resulting stress upon families. Assessments of children in need who are disabled should be, wherever possible, combined with those under other legislation and information gathered by different local authority departments can be used for multiple purposes. Much of the information held by health, social work and education agencies is very personal. Local authorities should develop systems for sharing information between departments and health services which take account of the need to protect user's confidentiality. Families' and parents' consent should always be obtained before sharing information and exchange should be on the basis that the recipient has a clear "need to know". Health records held by parents and "personal passports" of information are successful examples of how information can be shared whilst ensuring that parents remain fully aware and involved. Established systems for formal assessment of special educational needs under the Education (Scotland) Act 1980, as amended, require collaboration between education, health and social work professionals and the involvement of parents and children and young people. These should contribute significantly to assessments of children with disabilities by social work departments and may be used as a foundation for further joint decision-making about families' wider needs for social support and services. Assessments of disabled children and their carers should normally take place concurrently.

15. Many children with disabilities may need continuing services throughout their lives. Assessment should take a long-term perspective. This will help families and professionals to make decisions about the kind of help needed, at different points in time, for example with education, independence training, respite or other services. The outcome of the assessment should be a full and accurate picture of the child and family which focuses on strengths and abilities as well as difficulties and needs.

Sections 23 & 24

16. When families seek their help, local authorities should provide families of disabled children with verbal and written information about their eligibility for certain assessments under the Act. When a local authority undertakes an assessment of the needs of a disabled child, they should also inform any carer who regularly provides a substantial amount of care for the child, of their entitlement to an assessment, if they want one, of their ability to continue providing care for the child. The local authority should routinely take into account the family's wider circumstances, including a parent's or carer's capacity to provide care, when considering what services should be provided to promote a child's welfare.

Section 24

17. The local authority should inform the parents or carers and, where appropriate, the child, where he or she is of sufficient age and understanding, of the outcome of any assessment concerning the child or the child's carers, in writing as well as verbally. If the carer requests an assessment the local authority should have regard to the results of this assessment when deciding what services should be offered to promote and safeguard the child's welfare. Local authorities should avoid the use of professional jargon, and send written information and reports to families in good time, and, where possible, in advance of planning or review meetings.

18. If the local authority decides to provide services to a child, they should make a plan with the family, which should form the basis of a written agreement outlining

the nature of the service or services to be provided, for how long these may be required, the objectives of the plan and the roles, responsibilities and tasks of all those involved in the plan, including other agencies and family members. The plan will normally be co-ordinated by the social work department. Written plans provide families and social work departments with a benchmark against which both can assess the effectiveness of the services which the local authority provides to the child or family. The plan should include relevant information about services which the family receive from other agencies but, unless it refers to services which the local authority is arranging or commissioning jointly with another agency, it is primarily a tool to assist the local authority's work with the family. The plan and agreement should take account of the child's view and note any areas of disagreement between the social work department, the family or other agencies. It should specify how and by whom any problems or dissatisfaction will be dealt with if these arise. The agreed plan should be a concise document.

19. The social work department should, with the child and family, regularly review its plan to help the child and reassess the family's circumstances when necessary to ensure that services continue to meet the child and family's needs and are an effective use of the local authority's resources. Continuity of service should not normally be broken for reasons not related to the child's welfare. If reviews of the social work department's plan need to include other agencies and professionals, these should be co-ordinated with statutory reviews for other purposes, such as the case review of a child who is looked after by the local authority, or the education department's annual review of a child's educational progress, to avoid families having to attend a series of meetings called by agencies for different purposes. The conduct and content of any review should be appropriate to its purpose. Some will require detailed attention - others may be briefer.

Children affected by disability

20. Children affected adversely by disability in the family include siblings of disabled children, who may have a range of needs as a consequence of their brother or sister's disability and the additional demands upon their parents. Children may be adversely affected by the disability of their parents or other adults in their family. This group also includes children and young people who provide support and care for disabled family members. The needs of these children may be overlooked by professionals and they may experience disruption to their education and development if they carry inappropriate levels of responsibility for a parent or other family member. Care managers for disabled adults should be aware of and inform parents or adults of their right to request an assessment of their child's needs, in addition to assessment of their own needs for services under section 12A of the Social Work (Scotland) Act 1968. Social workers should assess the impact of adult disability on children in the family and should encourage parents to ask for an assessment of their child's needs when it appears that the family may need help. Whilst the level of responsibility for household and domestic tasks, care for siblings and other help for parents varies, children should not be expected to take on similar levels of caring responsibilities as adults or be responsible for intimate personal care and supervision of their parents.

Section 23

21. Disabled parents and their children may be anxious that acknowledgement of difficulties may lead to a break up of their family. There may be differences of view or conflicts of interest within a family. Both may need reassurance that social work departments offer a wide range of services and have a duty to support families

Section 24
Section 23

in bringing up their children. Local authorities have duties to provide services for disabled adults under the Chronically Sick and Disabled Persons Act 1970. Providing adults with help that they need is likely to be an effective way of meeting the needs of their children. The first priority should be to provide sufficient help to the adult to enable him or her to exercise parental responsibilities and rights. If assessing the ability of a young person to provide care for a disabled family member, the local authority should also assess the child's needs. When undertaking assessment of children affected by disability, workers should

- listen to the child or young person and respect his or her views
- give time and privacy to children to help them talk about their situation and worries
- acknowledge parents' strengths and try to build rather than undermine their confidence and capacity for parenting
- consider to what extent responsibilities in the family are restricting the child's education, opportunities for social relationships and leisure activities
- consider the child's emotional and social development.

22. Specialist services for children and young people who are affected by disability in the family may be useful sources of advice. These include projects for children supporting other disabled family members and children affected by their parents' HIV infection or AIDS. Helpful perspectives on work with young people supporting a disabled family member are contained in a report of four Social Services Inspectorate workshops.¹

Partnership with Parents, Children and Families

23. Achieving partnerships with parents and children in the planning and delivery of services to children requires that

- they have sufficient information at an early stage, both verbally and in writing, to make informed choices
- they should be aware of the various consequences of decisions they may take
- they should be actively involved in assessments, decision-making meetings, case reviews and conferences
- they should be given help to express their views and wishes and to prepare written reports and statements for meetings where necessary
- professionals and other workers should listen to and take account of parents and children's views
- there should be clear and accessible means for families to challenge decisions taken by professionals and to make a complaint if necessary
- administrative arrangements should take account of the needs of children and their parents, for example, in deciding the location and timing of meetings to ensure their attendance, providing a welcoming and comfortable environment.

1 Young Carers - Something To Think About: DOH 1995

24. When a child has complex needs or communication difficulties additional arrangements may be needed to establish his or her views. It may not always be appropriate to have parents or other family members act as a means of communication between professionals and children and young people. There may be instances when the views of children and their parents do not coincide. The local authority should consider at an early stage whether an interpreter or similar facility is necessary to assist communication. Consulting children with disabilities requires expertise and staff may need special training. Local authorities should identify workers with the requisite skills so that a sound assessment of a child's special needs, requirements and abilities, and a clear account of their views, can be obtained. Such expertise may be found in specialist organisations if it is not available within social work or other departments. For example, local associations for people with a sensory impairment may have workers with specialist communication skills. Other agencies who provide services to the child and family and know the child may be able to help workers find out children's views.

25. Aids to communication, including information technology, the use of alternative and augmentative communication systems, interpreters and any other means of communication used by children and their families should be made available when they are needed, by the relevant local agency or service.

26. The child will need to understand how communication is going to take place, to trust both their social worker and any interpreter and feel the communication arrangements are adequate. If an interpreter does not know the child then he or she will need to meet the child and learn about his or her means of communication and level of comprehension before helping the worker find out the child's views. In seeking the views of children who are disabled, the need for mechanical aids to communication, an interpreter, or the need to clarify responses may make communication slower. The child's own pace should determine the timing and content of interviews.

27. There is a fine balance between encouraging children and young people to be involved in decisions made about them, and burdening them with inappropriate levels of responsibility for decision-making or asking them to take decisions without sufficient knowledge or experience. All children need to be given information and plans should be explained, discussed and, if necessary, reassessed in the light of the child's views. The more mature the child, the more fully he or she will be able to enter into discussions about plans and proposals. Maturity is not solely dependent upon age. Younger children will also have contributions to make. Children's views should always be taken seriously. If a local authority makes a decision about a child that is at odds with his or her views or wishes, the child's social worker or equivalent, should take care to explain the reasons why this is necessary to the child.

28. Advocacy for children and families, within social work departments and with other statutory agencies, is one of the functions of the social worker. In addition a child or family may want an independent, knowledgeable person to help them represent their interests effectively in a variety of ways and settings. Some local authorities employ a designated Children's Rights Officer who undertakes this task for children in receipt of services from the local authority. Voluntary organisations may assist local authorities to develop advocacy and representation schemes in their area. Some parents may need a lot of help to participate effectively in planning services for their child or family, for example liaison with professionals and agencies,

maintaining records of meetings and correspondence, filling in forms and seeking second opinions.

User's views, representations and complaints

29. Section 5B of the Social Work (Scotland) Act 1968 as amended by the NHS and Community Care Act 1990 requires local authorities to establish local procedures for considering complaints about the discharge of any of their social work functions, including those for child care services. Complaints about the way the social work department is acting towards a child in need may be made by the child, his or her parents or anyone else with parental responsibility, any carer including foster carers or any person who has a legitimate interest in the child's welfare. Guidance on local authority procedures for complaining about social work services is contained in Circular SWSG 5/1996 in the Community Care series. If a family disagrees with decisions made by the education department about a child's special educational needs, they should ask the local authority to review the assessment and decisions. If the family remains concerned, they may appeal to the Secretary of State for a review of the assessment and any Record of Needs.

30. Social work departments should provide children and young people and their families with information that they can use about how to comment on their service. Social workers may need to help children with disabilities to lodge or pursue a complaint. Local procedures should be well publicised, simple to follow and easily accessible. Information should be made available in a variety of public places used by children who are disabled and their families, including GP surgeries, hospital outpatient departments and clinics, schools, libraries, nurseries, Benefits Agency Offices and Citizen's Advice Centres.

31. The complaints procedure must allow for any complaint to be resolved quickly and as close as possible to the point of service about which there is concern or dispute. Where a family makes a complaint about services that they feel are inappropriate for their child with special needs, the social work department may need expert advice on the needs in question and reassess its service or provision for these in the light of the outcome of the complaint.

Services for Children who are Living at Home

Social work services

32. Families with young disabled children should be able to use local services, including family centres, pre-school playgroups, mother and toddler groups, that are generally available to all children and families. Community based resources should include information and advice on disabilities, local services, entitlement to welfare benefits, counselling, general support with parenting, occupational, social, cultural and recreational activities. Resources and services should be appropriate for and accessible by local ethnic minority communities to use as they need. Local authority housing departments should ensure that suitable accommodation is available for families with disabled children including facilities to manage problems with, for example, mobility, incontinence or behavioural difficulties. Disabilities which carry special health care needs, such as epilepsy or HIV, should not be regarded as barriers to the use of local children's services in social work or education.²

² Children and HIV, SWSG 1992

33. Local authorities should agree with local service providers, both internal and external, the standards of service which they and users can expect both generally and for individual packages of help and support. They will develop a range of services designed to meet local need in accordance with their own priorities and the resources available to them. Local agencies should promote a team working approach which allows flexible responses to children with disabilities and their families. Where specialist teams in health or education settings are the main source of support for local children who are disabled, social work should be represented in the work of such teams. Social work departments may consider the need to be represented in multi-disciplinary teams, particularly in hospitals or primary health care settings as a cost-effective way of organising flexible and responsive services.

Hospital social work

34. The health service is usually the first agency to identify childhood illness and disability, leading to longer-term needs. Parents and families describe the way in which their child's illness or disability is diagnosed and explained to them as being crucial in determining how they will adapt and come to terms with new and far reaching responsibilities. Social workers employed in hospitals are particularly well placed to offer information, advice and support for parents at this time and may also be able to identify the needs of children who are affected by the disability of a sibling or other family member. If a child has a prolonged stay in hospital the hospital social worker can provide emotional support for the child and family through counselling, and practical and financial help, for example arranging child care for a sibling or assisting the family to obtain travel expenses for hospital visits. He or she should prepare a plan to help the child's discharge home in liaison with community-based social workers, occupational therapists or specialist voluntary organisations.

Home care services

35. Home care and related services for families with children who are disabled can provide help directly to the child or to some other member of the family if that would best promote the child's welfare. Domestic help, personal care, peripatetic support from education or health services, mobility training, the provision of aids and adaptations in the home, local transport and suitable housing, are all potentially vital resources which may reduce the impact of disability on a family and also prevent the need for a child to be cared for away from home. A home help to assist with household tasks may enable a parent to spend additional time with a disabled child or his or her sibling(s). Where necessary an occupational therapist should assess a child's living environment and identify changes necessary to enhance the child's quality of life. Aids and adaptations to a bedroom or bathroom, or the provision of additional equipment may remedy deficiencies in accommodation, or make the family environment safer for children who have a learning disability or behavioural problems related to their disability.

36. Meeting other parents with a child who is disabled can alleviate the isolation, stress and depression that many parents experience. Local groups for parents or carers, including young people supporting a disabled family member, can be a useful source of support. Some parents may need support and encouragement from professionals to become involved. For example a visit by a social worker before a first group meeting may reduce worries a parent may have about attending. Others may choose not to participate because they do not want their support to be organised

around their child's disability. The worker advising the family should discuss the options available and a family should not be referred to another agency without their knowledge and consent. Volunteer befriending schemes which provide support for parents of young children, usually from other experienced parents, have proved popular with families who have welcomed help and support in coping with the normal stresses of child-rearing. With additional specialist advice these services may also assist parents of children who are disabled.

Day care

Section 27 37. Local authorities shall provide appropriate day care for children in need in their area who are aged five years or under and have not yet started school. They may provide day care for young children who are not in need as defined in the Act. Local authorities also have a duty to provide appropriate care after school and during holiday periods for children in need who are of school age. They may also provide such care for children who are not in need. The development of most young children with disabilities or special educational needs may be enhanced if they can attend day care and educational services for all children. In making arrangements for including children with disabilities in day care or pre-school settings, providers practitioners and inspection and registration staff should ensure that the physical environment, staff/child ratios, skills and training of staff are appropriate to meet the practical, emotional and developmental needs of these children. Children attending a day nursery or nursery class need to communicate with staff, receive appropriate attention, stimulation and education, to move around freely where possible and interact with other children positively.

38. SWSG have issued guidance on standards, quality and regulation of day care services.³ Local authorities should consider the needs of children with disabilities in planning and registration of local day care provision, including the childminding provision in the area. Local authorities' statutory triennial reviews of local day care and related provision under the Children Act 1989 should include information about services for children with disabilities, access, and parental involvement, and have regard to representations made to them by those concerned with such services, including families and referrers, as well as local providers.

The role of the voluntary sector

39. There are many local and national voluntary organisations in Scotland and the rest of the UK concerned with disability. Most have local groups and many work together with other voluntary organisations. Voluntary agencies are often valuable sources of information for families. They may provide emotional support and advocacy for families and offer practical services, such as loans or financial help to buy equipment, play schemes, holidays, residential, education or respite services.

40. Many voluntary organisations have developed new skills and expertise in working with children with rarer disabilities or complex needs, such as those with multiple disabilities or challenging behaviour, or from minority groups. Specialist skills and knowledge will be helpful in assessing need both generally and in individual cases. As local authorities enter into contractual arrangements with voluntary organisations for provision of local services, they should secure

³ "Regulation and Review of Childminding, Day Care and Education Services for Children under Eight", SWSG, June 1991.

- early involvement of voluntary agencies in planning services
- explicit service agreements
- agreed assessment, recording and review procedures
- training opportunities for voluntary sector staff.

Education

41. When providing support and services to families with children who are disabled local authorities should make every effort to ensure that children can attend a local mainstream school or local special school if this can meet their identified needs and is in their best interests. The success of an integrated placement in education will depend on positive attitudes and expectations and on a clear understanding of the child's needs and how these can best be met. Where children with disabilities have particular health needs and require medication or treatment in school, whether occasionally or regularly, special arrangements may need to be put in place to ensure medicines are administered safely and appropriately. Arrangements for the safe administration of medicines in schools should be developed in conjunction with local providers of school health services. Similar arrangements should be put in place to avoid children with disabilities being excluded from other local authority and independent sector provision. The Scottish Office Department of Health and Education and Industry Department intend to issue a statement of good practice in this area entitled "Medicines in Schools", following a report by the National Pharmaceutical Advisory Committee.

42. Education authorities have a duty under section 1 of the Education (Scotland) Act 1980 to secure the adequate and efficient provision of school education for children in their area, including those with special educational needs.

43. Children and young persons have special educational needs if they have a learning difficulty which calls for provision for special educational needs to be made for them (section 1(5)(d) of the Education (Scotland) Act 1980). A learning difficulty is said to be present if children or young persons

- have significantly greater difficulty in learning than the majority of those of their age
- suffer from a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for those of their age in schools managed by their education authority
- are under the age of five years and, if provision for special educational needs were not made for them, are, or would be likely, when over that age, to have a learning difficulty as defined above.

44. Special educational needs may arise from learning difficulties related to neurological or physical disability, or barriers to learning caused by sensory impairment, social, emotional or behavioural problems, or mental illness.

45. Education authorities carry out assessments of special educational needs in order to determine whether a formal Record of Needs should be opened. Although as many as 20% of children may at some time have educational needs requiring some form of additional provision, only about 2% will require a Record of Needs.

A Record of Needs identifies a child's learning difficulties so that long-term educational strategies can be developed especially for him or her.⁴

46. The education authority will generally initiate an assessment
- as a result of a school-based assessment
 - following a recommendation by the education authority psychological service
 - through referral from another source, such as medical or social work personnel
 - at the request of parents
 - at the request of a young person.

47. SOEID Circular 4/96 emphasises the need for early identification of children and young people with learning difficulties, the need to involve parents, children and young people fully in the assessment and recording process, and the need for all agencies involved to work together effectively. It notes that young persons are given specific rights under the 1980 Act to request an assessment, to have information, to have their views taken into account and to challenge decisions made about them by the education authority. Where a young person is not able to exercise these rights, his or her parents may exercise them on his or her behalf. Delays in assessment and opening a Record of Needs put a child or young person at a disadvantage and therefore the Circular recommends that authorities complete assessments and make a decision about whether a Record of Needs is required within six months of their notification that assessment may be necessary.

48. An assessment of special educational needs will include educational, medical and psychological advice; information from parents and any others who know the child well and can make a positive contribution; advice from the social work department or the Health Board and any other relevant advice or information. Social work and education departments should develop joint procedures to make sure that assessments for different purposes are well co-ordinated, do not duplicate effort and place families under greater stress. Education departments should notify social work departments of impending assessments of special educational needs involving children with disabilities so that the social work department may consider whether a conjoint assessment of needs under the 1995 Act should be undertaken. Similarly the education department should inform the social work department when a Record of Needs is opened. The local authority should advise families of the local arrangements for sharing information between departments when this would assist assessment or improve their capacity to provide services.

49. The 1980 Education Act requires education authorities to consider and report upon what educational provision would benefit a child with a Record of Needs after he or she ceases to be of school age. Education departments should carry out this assessment of the child's future educational needs within the two years before the child leaves school. They must complete the assessment at least nine months before the child is eligible to leave school. The assessment should take into account the views and wishes of the child and his or her parents. Section 13 of the Disabled Persons (Services, Consultation and Representations) Act 1986 requires the

4 Scottish Office Education and Industry Circular 4/96 - Children and Young Persons with Special Educational Needs - Assessment and Recording.

education department to obtain an opinion from the appropriate authority, normally the social work department, as to whether or not the child is a disabled person, before carrying out a future needs assessment. Where the social work department gives an opinion that the child is a disabled person they must then assess, and prepare a report on, the needs of the child for any statutory services under any of the relevant welfare enactments. The child's needs for social care or services should be assessed concurrently with the future needs assessment, unless the child, or his or her parents, request that such an assessment should not take place.

50. Education departments should review the progress of a child or young person with a Record of Needs at least annually. Where a social work department is providing support to a child or family, the social worker or care manager should receive copies of relevant reports and should be invited to attend any review meetings provided that the parents and child or young person agree. Similarly the social worker or care manager should be involved in any review of the Record of Needs. These arrangements ensure that both education and social work staff are well informed about the child's progress and any difficulties that he or she may be experiencing at home or in school which may affect him or her in the other setting.

51. The Children (Scotland) Act 1995, the Education (Scotland) Act 1980 and the Disabled Persons (Services, Consultation and Representation) Act 1986 together create a new framework within which social work and education departments can co-ordinate assessment and services for children with special educational needs, including children with disabilities. Some children may also be the subject of supervision requirements from children's hearings on the grounds of non school attendance or other grounds. Local authorities should make arrangements for departments to review jointly the provision made for those children whom the local authority looks after.

Health

52. In order to fulfil their responsibilities in relation to children with disabilities local authorities need to work closely with local child health services in the community and in hospitals. Local authorities have to consider a child's health and development in providing services to children in need and they should be aware of good practice in health services' assessment and surveillance of child health. These include

- the oversight of the health and physical growth of children
- monitoring the developmental progress of all children
- providing advice and support from diagnosis onwards to parents or those caring for the child, and referral of the child to appropriate services
- providing an effective immunisation programme against infectious diseases
- encouraging parents to participate in health, education and training for parenthood programmes.

53. Children with disabilities should have access to the same services for health surveillance and health promotion as are available generally. Social work staff including day care staff, foster carers and childminders should be aware of local arrangements for early support from child health services and understand the importance of ensuring that children with disabilities use these services.

54. Child health services should be able to offer information, advice and help to other agencies to assist with the integration of children with disabilities into local services and schools. Primary care teams and other specialists in child health care have an important role in local assessment arrangements for children with complex needs, including mental health problems. When children present emotional or behavioural problems, local authorities should consider the need to seek advice or assessment from a clinical psychologist and/or a psychiatrist. Social workers should have information about local child mental health services and how to refer to them.

55. Some children will have extensive needs for medical, paramedical and nursing care and the health service has a continuing role in providing care for these children whether in the short or longer-term. The need for such provision should be identified after multi-disciplinary assessment and should form part of a comprehensive programme of support and care for the child. Where possible children should be supported in community-based placements with input from the NHS to assist this aim. Where NHS provision is required, the aim should be to provide care in small, homely, locally based units suitable for children to live in. If, through illness, a child needs to spend lengthy periods in hospital or at home, the local authority should make provision for their educational needs. Hospital social workers are well placed to contribute to the continuing assessment of health and social care needs of the very small number of children and young people in hospital and to give practical advice and support to families and health care teams.

56. Some children have major health care needs or life threatening conditions. In many such cases health services provide personal support for children and their carers. Families may also need access to local independent advocacy and support services. The wishes and feelings of the child should guide the intervention of professionals. Children and families should be able to talk to medical advisers about the management of their condition and future prognosis. Sensitive support, such as counselling, home nursing and respite services, may enable families to look after their child at home throughout an illness, including its final stages. A children's hospice may combine respite, support in the family's home and residential care to suit the child and family's needs. The management of very sick children requires a holistic approach which involves health, social work, education and specialist voluntary sector workers in planning how best to meet all their needs, in addition to the requirements stemming from illness.

Looking after a Child who is Disabled

Respite services

57. There are many kinds of respite arrangements to help children with disabilities - provision within the child's home, daytime care, occasional overnight stays and regular periods of care with an approved family or foster carer, or in a residential home and shared care arrangements with foster or other family carers. Children who are placed for respite in a residential or family setting for more than twenty-four hours in any one period, that is, where the child remains away from his or her home overnight, are looked after by the local authority and the Arrangements to Look After Children (Scotland) Regulations 1996 apply to these children. The Regulations allow a planned respite care arrangement involving a series of placements at the same place to be treated as a single placement for the purposes of the Regulations and associated requirements for planning and review. For family

placements all such multiple arrangements should normally take place with the same carer and for residential placements, these should take place at the same establishment. The Regulations require that a child beginning a series of regular placements for respite should undergo a first medical examination. This examination will provide helpful information and protection for carers and parents but this would not need to be repeated for subsequent placements. The Regulations do not apply to multiple respite placements lasting less than twenty-four hours.

58. Respite services may give family carers a break, extend the range and quality of the child's experience and give him or her opportunities to develop increasing autonomy and independence. A flexibly managed community-based respite service is likely to be cost-effective when compared with the cost of family stress and breakdown. Families may not always welcome separation from their child, especially if the child is terminally ill. A respite scheme could provide care for the child with accommodation for the whole family. A report on respite care commissioned by the Social Work Services Inspectorate in 1993 found that there are good examples of family-based and residential respite care in Scotland, but services were generally patchy and those for children tended to focus on children with learning disabilities. Services for children with physical disabilities were often in health care settings alongside adults, older people and the terminally ill. Social Work Services Group issued guidance on how respite care services should be developed (Circular SWSG 10/96 of 28 March 1996). This is primarily concerned with adults but many of the principles apply to children.

59. Respite care should be provided as part of a planned package of services to support the family or, where the child is being looked after by the local authority, the child's usual placement. Families with children affected by disability may need speedy access to respite carers whom they know when a parent experiences an acute relapse or needs to go into hospital suddenly.

60. Local authorities should seek to achieve

- an accessible service, where the placement can maintain good links with home and school
- a standard of provision which ensures that the child's developmental needs are met in addition to those deriving from disability
- a mix of flexibility and planned availability - a service in which parents and children can exercise choice about when to use respite
- partnership between the local authority, service providers and the family
- respite care for children with complex needs or challenging behaviour
- respite care which provides younger children and adolescents with relevant care and activities
- care which takes account of the child's family background, racial and cultural origins, religious and linguistic or other communication needs
- care which is part of a framework of professional support which addresses the wider needs of the child and family.

61. The length and timing of each respite placement in a series need not be specified in advance in care plans or reviews. The Regulations apply to a series of placements within a one year period. None of the placements should last longer than four

Regulation 17 weeks. A child may not spend more than 120 days in respite care in any one year. If a child remains in a respite placement for longer than four weeks or spends more than 120 days per year in a respite placement, the local authority should take any necessary steps to safeguard and promote the welfare of the child, including referral to the Principal Reporter if appropriate. Such steps could include discharging the child from the respite placement but in such circumstances the local authority should ensure that adequate supports remain in place for the child and family.

Section 31 62. The local authority is required to review regularly the cases of children whom they look after. A series of short-term placements which are treated as a single placement should be reviewed by the local authority within three months from the date on which the first placement was made and thereafter at periods of within six months of the date of the previous review. Reviews of respite placements should be fit for the purpose and cover those issues outlined in Annex 3 of Volume 2 chapter 1 of the guidance on Children Looked After by Local Authorities. The local authority is less likely to review those matters which are ordinarily the concern of the child's parents, such as health or education, unless these have a direct bearing on the child's welfare in the respite placement or affect the suitability of the placement. In their application to short-term placements the Regulations provide for flexibility so long as the service remains appropriate to children's needs and safeguards their interests and welfare.

Regulation 17(3)

Family care

63. There has been considerable growth in fostering for children with special needs, including multiple disabilities. Some social work departments have developed, with help from voluntary agencies, specialist fostering schemes able to provide multiply and profoundly disabled children and young people with high quality and skilled family care. Many foster carers bring considerable skills and practical experience to caring for children with disabilities, and are a valuable source of expertise for social work departments.

64. Accommodation for a child with a disability should be suitable for his or her needs and arrangements may need to be made to ensure the child's health and safety within the household. Some foster homes may need adaptations to enable a placement to proceed. A telephone may need to be adapted to enable children with hearing impairments to talk to their family and have access to confidential helplines. Children with disabilities should have privacy in bedrooms and bathrooms and should not be prevented access to the main areas of the home such as the living room or kitchen because, for example, a door is insufficiently wide for a wheelchair or too heavy for a child to push open, or the physical environment is not safe for children with special needs. If children require medication or treatment occasionally or regularly, foster carers may need special training and support to administer medicines safely and appropriately. Advice offered to school staff about the administration of medicines in schools may be of assistance here to local authorities in developing local practice in foster care.

65. There may be a risk that children would be excluded from certain areas or rooms if foster carers do not feel confident about managing a child with a particular type of disability. To prevent this the placing social worker should consider with foster carers any potential difficulties with their accommodation or their need for

additional support in looking after a child who is disabled, prior to placement, and regularly throughout the placement. Support for the foster child and foster family may be available from a local GP through “temporary registration”. There may also be a need to ensure continuity of specialist health care where this is being provided. The local authority should give foster carers, like any other carers, information about the full range of local services for children and make sure that they are put in touch with other parents and professional and voluntary agencies which can offer help and support. Many authorities and voluntary organisations will have experience of developing specialist fostering schemes for children with disabilities upon which other local authorities might usefully draw.

66. Continuity in education should be given high priority in making a placement. Foster carers should be willing to participate in the social, academic and community activities of the school which a child placed in their family attends. This might entail attending school activities such as open evenings and education department reviews, liaising with the child’s class teacher(s), making sure that the child has access to and is able to use facilities for study, encouraging and helping the child to bring friends to the foster home or attend leisure activities or play schemes, and to have an active and fulfilling social life.

67. The social work department has a responsibility to ensure that the welfare of children in private fostering placements is safeguarded and promoted as for other children in need or looked after by the local authority.⁵

Residential care

68. Assessment of needs, led by either the education or social work department, may indicate a specialist residential placement is required to promote a child’s development. Any placement should be made on the basis of this being in the best interests of the child. The Regulations and guidance on children who are looked after by a local authority deal with the care of children who live in residential homes and outlines the assessment, planning and review processes needed to make sure that residential placements successfully meet the needs of children and their families. As with children placed in foster families, children with disabilities placed in residential homes will have special needs over and above those of children without disabilities. They should have the same quality of accommodation and rights to privacy as non-disabled peers and a child should not be placed in a setting where he or she cannot use the recreation, living or garden areas because he or she cannot gain access to them. Homes which accommodate children with a disability should have the equipment, facilities and adaptations needed to include them in all aspects of home life. For example, a child with a visual impairment might need access to a computer at the home to do homework; the management of incontinence will require suitable bathroom accommodation which offers space, privacy, sufficient hot water and proximity to other living areas. Children in residential homes also need to feel safe and protected by staff. In some circumstances adults may need to prevent children from acting in ways that are harmful to themselves or others. Residential schools should negotiate local arrangements for access to school health services or ensure equivalent arrangements with local primary care services.

5 See Guidance Circular SWSG 16/85 The Foster Children (Private Fostering) (Scotland) Regulations 1985.

69. Residential homes should ensure that physical safety precautions are in place, particularly in older or adapted buildings which have not been designed to accommodate children with disabilities. British Standards Institute publications give guidance on access issues for disabled people. Arrangements for fire drills and evacuations should be well publicised and clear, and their effectiveness reviewed regularly. Children with physical or learning disabilities or sensory impairments should be aware of and able to respond to fire alarms. The fixtures and fittings in residential units should comply with fire safety standards.

*Section 61
Social Work (Scotland)
Act 1968
(as amended by Section
34)*

70. Residential establishments, other than those controlled or managed by local authorities, which provide personal care or support for children and vulnerable adults, as their sole function or as a substantial part of their functions, may be required for the purposes of the 1995 Act or the 1968 Act, to register with the local authority. This includes residential establishments which are grant-aided or independent schools. Residential schools for children with disabilities which provide such care and support and are registered, will be regularly inspected and their managers and staff will have access to advice and guidance from the local authority. Enhanced arrangements for inspection are of particular importance for children with disabilities because they are potentially more vulnerable due to communication difficulties, the greater number of adults involved in often very intimate care and the distance from their homes at which some children may be placed. Local authorities should refer to the guidance relating to arrangements for registration and inspection of these homes in Volume 2, chapter 5 of this guidance. HM Inspectors of Schools also examine whether there are adequate arrangements in place to safeguard and promote the welfare of resident pupils as part of their inspections of residential schools.

Section 35

71. Children with disabilities may be placed in specialist establishments at long distances from their homes and communities. Local authorities should set clear aims and objectives for any residential school placement and determine how the child's links with his or her family and community of origin will be maintained. The local authority should keep in regular contact with the residential school and the child's parents, and local authority social work and education departments should maintain good communication and co-ordination throughout the placement. This will assist any arrangements for the child's future or further education at the end of the placement. When a child is provided with accommodation for the purposes of attending school, the education authority, board of management or managers of the school have a duty to safeguard and promote the welfare of the child throughout the period he or she is accommodated in the school.

Section 35

Section 36

72. If a child in residential accommodation provided by a Health Board, NHS Trust, private hospital or nursing home has had, or is likely to have, no contact with a parent or other person with parental responsibilities for a continuous period of three months or more, the local authority must be notified by the person responsible for providing the accommodation. Contact is the personal contact that reasonable parents could be expected to have with their child whilst the child is away from home. This should normally include visits and telephone calls. The local authority must then determine whether the child's welfare is being adequately safeguarded and promoted, and whether they should exercise any of their functions under Part II of the Children (Scotland) Act 1995. The local authority might consider providing the child with accommodation or any other services, or seek a parental responsibilities order (refer to guidance in Volume 3 of the Children (Scotland) Act

1995 series). A person authorised by the local authority has powers to enter and inspect public and private health services premises and records for the purposes of ensuring that responsibilities under this and other sections of the Children (Scotland) Act 1995 and relevant sections of the Social Work (Scotland) Act 1968 as amended are satisfactorily met. The local authority social work department or equivalent should make sure that local health and hospital services are aware of the name, address and contact telephone number of the appropriate person in the local authority to whom such circumstances should be notified.

Protecting Children who are Disabled

73. Children who are disabled have the same needs, the same rights and should enjoy the same protection as any other child. Many factors may make them vulnerable to abuse and exploitation including isolation, communication difficulties, limited mobility, sensory impairments and social stigma. Child Protection Committees should make sure that local child protection procedures take account of the special circumstances and needs of children with or affected by disability. Children with disabilities living away from home may be particularly vulnerable and local authorities should have policies and measures to prevent abuse of children who are looked after in residential or foster care. Specialist social workers for children with or affected by disability should be aware of local child protection procedures and be equipped to undertake child protection work where necessary.

74. Child protection work is complex and potentially contentious. Children with disabilities who may have poor access to information and communication difficulties may not know how, or who, to talk to about problems. Social workers supporting children who are disabled need to take account of their special requirements. Staff should be alert to the risk of emotional abuse or neglect which can be difficult to detect where there are language barriers or other health problems. Police and social workers, and other relevant agencies should share information about referrals at an early stage and plan together the best way to proceed. Joint training for social workers and the police should include consideration of the special needs of children with disabilities in joint investigations. If the social worker undertaking child protection inquiries does not have the requisite skills to communicate with a child, they need ready access to specialist workers to enable effective communication and find out whether a disabled child has been harmed or abused. With support and the advice of a known and trusted individual, the majority of children with disabilities can communicate their feelings, views and needs.

75. Child protection workers should assess each child's needs and the extent of his or her abilities, taking into account the particular disability, when deciding how to conduct initial inquiries. Child protection workers should also assess the ability of the parent or parents to communicate with and understand the specific needs of their child. Many parents will be the people most able to communicate with their child, but some will have more difficulty. Some parents may not have developed skills to communicate fully with their children, for example, not all will have sign language skills to enable them to communicate fluently with a child who is deaf. The social work department should not ask any person implicated in abuse of a child, or partners, close colleagues and friends to assist communication with the child.

76. There are a number of practical points to be noted when undertaking child protection work with children who use alternative communication

- the social worker and any interpreter will need to spend time together to plan and agree their respective roles in work with the child and the issues to be raised in any session
- the social worker and interpreter should explain their respective roles to the child and family. If the interpreter does not know the child then he or she will require time with the child, prior to work beginning, in order to assess the child's means of communication and level of comprehension
- interviewers must establish the extent of the child's vocabulary. For example, does the child have the necessary vocabulary to describe or identify body parts?
- there may be implications for the method of recording interviews with children who communicate in different ways. Video recording needs to be very high quality to pick up any detail of facial expressions and gestures, which may be of particular significance
- workers should be sensitive to body language and non-verbal cues. Workers should address the child and not the interpreter.

77. There are many factors which workers conducting child protection inquiries and interviewing children who are disabled, may need to consider.⁶ For example, a deaf child who lip reads may not follow and understand all that is said. During any interview the speaker should make sure that the child has understood what is being communicated. If the child is communicating with more than one person, care should be taken to ensure that he or she can see the faces of everyone in the room. Good lighting is essential. A child who is deaf and communicates through the use of sign may be able to refer to and describe visible objects but may have more difficulty with abstract concepts, for example, yesterday, tomorrow, hot, soft, trust, disappointed. Social workers and police officers involved in investigative interviews should consider the terms they use with the child carefully and take time to ensure that the child understands what is being said.

78. Some children may be able to make only limited use of visual material and diagrams. They may appear to have a facility with words which may not be matched by their ability to understand verbal communication. Discussion should be broken down into small steps and interviewers must make sure that they and the child have understood each other before moving on to the next stage. In order to establish exactly what may have happened to a child who is unable to describe this in typical ways, the methods used to communicate with the child who is disabled may need to be adapted to reflect the child's needs and requirements. Where there are language and reading problems, comprehension can sometimes be greatly assisted by using pictures, drawings, diagrams and other graphic means. Agencies will need to consider whether these may be needed as evidence in any later criminal prosecution and therefore should be retained by the police. Workers using different tools and methods of communication in investigative interviews should be trained and skilled in the use of these techniques to ensure that these are used appropriately.

⁶ Bridging the Gap, NSPCC, 1992. This guide describes good practice in child protection work for children with multiple disabilities.

79. Workers should make sure that effective communication continues beyond an initial investigative interview. Children with communication difficulties will need help to convey their views and wishes to, for example, child protection conferences, and, where necessary, children's hearings and courts.

80. Some children who are disabled will need particular types of skilled care and would possibly suffer harm if a parent or carer were unable or unwilling to undertake such care. Definitions of "health" and "development" may be more difficult to agree upon when a child has multiple disabilities or complex behaviour patterns. Some children may need care tailored to their specific and individual needs. In making judgements about the nature and degree of risk, social workers should use the expertise and skills of specialist professionals. They may be able to help in understanding the significance of particular physical injuries or symptoms and establishing whether the child is suffering, or likely to suffer significant harm within the context of the child's special needs.

81. When a child who is disabled needs to be separated from his or her usual carers because he or she is not safe, the process of separation and admission may be particularly traumatic, especially if it is hard to communicate the reasons for this. The child should be placed in an environment which will be able to address the child's emotional distress as well as his or her practical needs. There may be a particular need for interpreting or additional aids to communication to reduce the risk of a child's isolation. The local authority has a duty to promote and maintain the child's links and contacts with his or her parents, family and other supportive and familiar adults where this is consistent with the child's welfare. If a child's family is not able to look after him or her in the long-term, the local authority should ensure that planning for the child's care takes account of their needs for security and permanence, and that arrangements for consent to medical treatment are satisfactory, particularly where the local authority or the child's carers do not have parental responsibilities in respect of the child.

Section 17

82. Children with disabilities, like other children, also have legal rights to consent to treatment or withhold consent to medical examination if they are judged, by medical practitioners, to have sufficient understanding to do so. Special efforts should be made to explain the purpose and potential outcomes of any medical examination or assessment. Children may be reluctant to have an examination if it involves unknown people in a strange place or unfamiliar or intimate procedures. They should have the opportunity to talk over what is being asked of them, with a trusted adult able to communicate effectively using the child's own preferred mode of communication or language.

Section 90

83. Child protection plans should outline the roles and relationships of child protection workers and specialist workers skilled in understanding and responding to the particular requirements of children who are disabled. Planning should actively involve the child's parents and other family members and other agencies, such as health and education, who are providing services to support the child and his or her family. Where abuse has been established children will need access to counselling and other forms of help to deal with the after-effects of trauma. In those cases where abuse is not substantiated families will need acknowledgement of this and perhaps some support to accept any help that they may later need from the local authority.

The Transition from Child to Adult Services

84. Families' needs for information and services will change as their son or daughter approaches adulthood and they begin to make plans for his or her longer-term future. Most young people become independent gradually, experiment with different kinds of accommodation, experience successes and make mistakes and often rely on their families for practical and emotional help until well after they reach eighteen years. Children with disabilities are more likely to need continuing support and services from local authorities, and often considerable help from their families, to assist entry into employment, training or further education, to live independently or remain with their family, and to achieve their full potential as adult members of their community. Children who have been adversely affected by another's disability may also require support and assistance to achieve independence or further their education if this has been disrupted by family illness or additional responsibilities at home.

85. Greater understanding and improvements in services have made it possible for disabled people to lead active, fulfilling independent lives in local communities. Where a child has a Record of Needs, the requirement to prepare a "future needs assessment", under section 13 of the Disabled Persons (Services, Consultation and Representation) Act 1986, can prompt the beginning of a planning process which takes account of the full range of the young person's needs. To help a young person make the transition from childhood to adulthood smoothly, social work departments should work with local schools, colleges, housing departments and families, and begin planning well before decisions have to be made. Local authorities should take into account the needs of people who are disabled in the development and adaptation of local housing provision and allocation policies and procedures. The housing and social work departments should work together to identify the extent and type of local housing need. They should consult local service users in doing so.

86. Before a child who is looked after by the local authority reaches eighteen years, up to and including the date of his or her eighteenth birthday, the circumstances and needs of the young person and his or her family should be assessed, taking into account their views and wishes for the young person's future, under section 12A of the Social Work (Scotland) Act 1968. Similar assessment should be offered to other young people who may need or are using services. The assessment should identify the young person's needs in relation to the following areas

- accommodation, including necessary aids and adaptations
- day care and respite services
- continuing education
- training or employment
- health care needs
- entitlement to welfare benefits
- social networks, recreation and leisure.

87. This assessment may form the basis for the provision of a planned package of adult services. Families should receive information about social work services available for adults and services available from other relevant local authority departments. They need to know about any differences in services available for young people who have reached the age of eighteen years.

88. As parents get older they may be physically less able to cope with their disabled child's care needs. The young person may wish to leave home, with or without the agreement of his or her parents. The young person may need access to an independent source of advice and support. Young people with disabilities should have access to independent living schemes, vocational training, suitable adapted housing and community support to enable them to achieve independence consistent with their abilities and wishes. The social work department should inform parents of their entitlement to an assessment of their needs under the Carers (Services and Recognition) Act 1995, when their son or daughter is over eighteen years of age. In circumstances where there is disagreement between the young person and their parents, or the young person and the local authority, about what is in his or her best interests, an independent advocate may help to represent the views and wishes of the young person and ensure that these are given sufficient weight in decision-making.

89. The knowledge, skills and experience accrued by a young person and those involved in helping him or her during contact with children's services, will need to be consolidated and built upon in order for the transition to adulthood to be successful and productive. Although different agencies' statutory responsibilities for children may vary by age, authorities should ensure some continuity for children and families during this transitional period. A worker, or key worker, should be identified from whichever service has most direct involvement to whom the young person and his or her family can turn for information and advice. This worker may be best placed to co-ordinate the package of services to assist the young person. At this stage in their lives many young people have worries about their personal and sexual development, and experience loneliness and isolation. Young people with disabilities should have access to skilled counselling about disability, sexuality and relationships, to take up if they wish, and receive information about available help and advice. Local authorities should aim to work closely with young people and their families to help them maximise their potential throughout their childhood and into adult life.

Protecting Children

Introduction

1. The Children (Scotland) Act 1995 introduces four new provisions aimed at protecting children from harm or at establishing whether children may be in need of protection from harm. They are

the child assessment order

the child protection order

the exclusion order

emergency child protection measures.

2. Local authorities may apply to use any of the new provisions. This reflects their central position in safeguarding and promoting the welfare of children in need. Child protection should, however, be seen in the context of local authorities' wider responsibilities for child care. To assist authorities in discharging those responsibilities, the Act introduces various powers enabling authorities to provide a range of different types of support for children and their families. The effective use of those powers will help to avoid situations which could lead to children being subjected to abuse and may thus avert the need for child protection intervention.

3. There will, however, be circumstances where child protection action needs to be taken, most often by local authorities but also sometimes by other public authorities and, even less frequently, by private individuals. One or other of the new measures provided for in the Act may be appropriate in such circumstances.

4. The new provisions are designed to ensure that effective action for the protection of a child can, where necessary, be taken. The Act in relation to these provisions places the child at the centre - his or her welfare is paramount. Any action authorised will, however, be taken within a framework of proper safeguards and reasonable opportunities for parents and others connected with the child to challenge such action before a court. Action authorised by the new measures is governed by prescribed time-limits.

5. All four new provisions require the condition of significant harm to be satisfied. The term "significant harm" is not defined in the Act. It will, therefore, be a matter for the judgement of those concerned with determining the outcome of applications to consider whether the degree of harm to which the child is believed to have been subjected or is suspected of having been subjected (or is likely to be subjected) is significant. Those contemplating an application for an order or authorisation will need to make a judgement based on as much information as can be obtained about the child and his or her family. They must be satisfied that they can demonstrate to a sheriff (or a justice of the peace in the case of an emergency child protection

authorisation) that the criteria for granting the particular Order (or authorisation) are met.

6. A local authority's decision as to whether an exclusion order or a child protection order is the more appropriate should always be governed by what is in the best interests of the child. The sheriff may substitute a child protection order when an exclusion order is applied for but he may not substitute an exclusion order when considering an application for a child protection order.

7. The forms of application for each of the three new Orders, the procedures to be followed and the forms of Orders which may be granted are prescribed in Sheriff Court Rules as are the arrangements for service. There is no prescribed form of application for an emergency protection authorisation. The Rules of Court are available from The Stationery Office Ltd.

Child assessment order

8. A local authority, and only a local authority, may apply to a sheriff for a child assessment order to enable them to carry out an assessment of the state of a child's health or development or of the way the child has been treated so that they may determine whether or not action to protect the child should be considered. Where an application has been made for a child assessment order and the sheriff considers that the conditions for making a child protection order are satisfied, he or she **must** make a child protection order.

Section 55

Section 55(2)

Child protection order

9. A child protection order may be made by a sheriff, on the application of any person, to authorise (but not to require) the removal of a child to a place of safety or to prevent a child being removed from the place where he or she is being accommodated. The new provisions relating to child protection orders set out clear grounds, clearly defined responsibilities for the person holding the Order and strict time limits within which the Order must be implemented. The duration and effect of the Order are limited to what is necessary to protect the child. The parents of a child who is subject to an Order, and certain other persons specified in the Act, may challenge the Order or any direction made under it. A sheriff may not make an exclusion order or a child assessment order where an application has been made for a child protection order.

Sections 57-60

Exclusion order

10. Under previous procedures the only means of separating an adult abuser from a child who lived in the same house, apart from removing the child, was by voluntary withdrawal by the adult, by an Order made by the court under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 following an application by an entitled or non-entitled spouse or cohabiting partner, or by bail conditions imposed by the court on an accused person. None of these measures is, however, designed for or suitable to intervention by a public authority to protect a child from harm and their effectiveness in protecting a child is likely to be limited to certain circumstances. The Act now empowers sheriffs on the application by a local authority to make an exclusion order excluding a named individual from the family home. Where the sheriff considers that the conditions for making a child protection order are satisfied, he or she **may** make a child protection order.

Sections 76-80

Section 76(8)

- Section 16(1)* 11. For each of the new Orders outlined above, the court must have regard to the
Section 16(3) overriding principle that the child’s welfare is paramount and in particular circumstances that making the Order is better for the child than making no Order at all.

Emergency child protection measures

- Sections 61(1) & 61(2)* 12. Emergency child protection measures may be authorised by a justice of the peace, on the application of any person or in certain cases on the application of a local authority, to allow (but not to require) the removal of a child to a place of safety or to prevent a child being removed from the place where he or she is being accommodated. A constable may remove a child to a place of safety without authorisation. In each case there must be grounds to believe that the conditions for making a child protection order are satisfied and that it is not practicable for an application for a child protection order to be made to a sheriff.
Section 61(5)

Section 55 **Child Assessment Order**

Introduction

- Section 55(1)* 13. The new child assessment order will enable a local authority to arrange assessment of a child’s health, development or the way in which he or she has been treated in order to establish whether a child is suffering or likely to suffer significant harm. It is designed for use in those cases where the degree of urgency is not considered so great as to suggest the need for a child protection order under section 57(2) of the Act, but where there is concern about a child’s safety or welfare, all attempts to assess the child on a voluntary basis have failed and professionals lack sufficient information to decide whether action is needed to protect the child. The child assessment order conveys authority for intervention with a child but it is a very limited form of intervention for a clearly defined purpose and period of time. It is distinct from the child protection order and the exclusion order, as the criteria for making those Orders are different. It could, however, lead to either of those Orders being considered depending on the outcome of the assessment. Equally, it could reassure the local authority that there is no need to pursue measures of intervention in order to protect the child from harm. The child assessment order ensures that proper examination of a child’s welfare can take place, where necessary, with the minimum possible disruption to the child and to the family’s routine.

Main features of child assessment order

- Section 55(1)* 14. These are the main features of the child assessment order
- a sheriff may, on the application of a local authority, make a child assessment order if he or she is satisfied that all of these conditions are met
 - (a) the local authority have reasonable cause to suspect that the child in respect of whom the Order is sought is being so treated (or neglected) that he or she is suffering, or is likely to suffer, significant harm;
 - (b) such assessment of the child is required in order to establish whether or not there is reasonable cause to believe that the child is so treated (or neglected); and
 - (c) such assessment is unlikely to be carried out, or be carried out satisfactorily, unless the Order is granted.

- the period of the Order is limited to a maximum of seven days and the Order will describe how and by whom the assessment will be carried out *Section 55(3)*
- if the child has to be away from home during the period of an assessment he or she will be looked after by the local authority who will have a duty to promote and safeguard the child's welfare and promote contact between the child and his or her family *Section 17(6)*
- where the child assessment order permits the assessment of the child to be carried out away from home, the Order must contain such directions as to contact as the sheriff considers appropriate *Section 55(5)*
- where the sheriff considers that the conditions for the making of a child protection order are satisfied he or she shall make a child protection order instead of a child assessment order. *Section 55(2)*

Who can apply for a child assessment order

15. Only a local authority may apply to the sheriff for a child assessment order. *Section 55(1)*
16. In considering an application from a local authority, the sheriff will have the child's welfare as the paramount consideration in deciding whether or not to make a child assessment order and will have regard to the views of the child, taking account of his or her age and maturity. The local authority should make the application in the form prescribed by Rules of Court and they should accompany the application with a clear statement of the basis for the local authority's concern about the child. *Section 16(1)*
- Section 16(2)*

Steps to be taken by the local authority before applying for a child assessment order

17. The basis for a child assessment order application is the suspicion of harm rather than firm evidence of harm or neglect. Before making an application for a child assessment order the local authority should have made efforts to establish whether the child is at risk.
18. The child assessment order represents more limited intervention than other court orders. Nevertheless, it is likely to cause distress and disruption, and, as with all court action, any decision to proceed should be clearly in the child's best interests.
19. The local authority should talk to parents about the local authority's duty to "cause inquiries to be made" under section 53 of the Act, and give them opportunities to explain their point of view. Parents who continue to refuse to allow the local authority to see or assess their child should be advised of the options open to the local authority when they have concerns about a child, including application for a child assessment order and the effects of this and other child protection measures. Parents will need such information confirmed in writing. By giving enough information about the range of options available and possible outcomes, the local authority may help parents to agree to voluntary arrangements for assessment.
20. The court will also want to be satisfied that parents' refusal to allow professionals access to their child is unreasonable. When judging whether refusal is unreasonable and warrants an application for a child assessment order, the local authority should consider all available information about the family's circumstances, the degree of suspected risk to the child and the nature and timing of requests

which have been made. Where a risk of significant harm is suspected, the local authority will have to judge the degree of urgency in the case in determining how to proceed.

Section 55(1)(c)

21. The court will require information about the nature and source of the suspected risk, and the outcome of the local authority's earlier enquiries. Information should include details of attempts to obtain the voluntary co-operation of those caring for the child. The sheriff must be satisfied that the assessment will not be carried out satisfactorily unless he or she makes a child assessment order.

22. The local authority should consider what kind of assessment is required to resolve their concerns about the child, and whether it is possible to obtain sufficient information from other sources without the need for a court order. For example, if the child is in school or nursery will staff there be able to monitor the child's circumstances? Or does the level of concern justify action sooner? The proposed assessment may include medical or psychological examination and involve specialist professionals such as paediatricians or child mental health workers. Given that a child assessment order may be made for a maximum of seven days, the local authority should ensure that proper arrangements are planned prior to an application so that the assessment can proceed smoothly and quickly if the Order is granted. This is likely to require careful consultation and negotiation with other agencies.

Serving of the application

23. The local authority should serve notice and a copy of the application for a child assessment order in accordance with Rules of Court. The local authority should provide as much information as possible about court hearings and the child assessment order at the time of serving notice and should advise the family to consider seeking legal advice and representation.

24. Those persons who receive notice of the application for a child assessment order may attend the hearing to contest the application or to seek specific directions from the sheriff about their contact with the child.

The child assessment order and what it may do

Section 55(3)

25. The child assessment order requires any person named in the Order, who is in a position to produce the child, to

- produce the child to any authorised person
- permit that person or any other authorised person to carry out an assessment in accordance with the Order
- comply with any other conditions of the Order.

Section 55(6)

(For these purposes, "authorised person" means any officer of the local authority or any person authorised by the local authority to perform the assessment or any part of it.)

The Order will specify the date on which the assessment should begin and the duration of the Order, up to a maximum of seven days from that date.

26. The child assessment order should not normally entail physical separation of the child from his or her family. Where, however, this is necessary for the purposes

of assessment, the Order may include direction that the child be taken to any place and may authorise the child to be kept there or at any other place for a specified period. This provision is not for the protection of the child through removal from his or her family but solely to make sure that the assessment is properly conducted and effective. *Section 55(4)*

27. If the child must stay away from home during the assessment the sheriff may make directions regarding the contact which he or she should have with parents, other family members and any person named in the Order. Any such directions would be provided for in the child assessment order and must be complied with by the local authority. *Section 55(5)*

The child's status

28. During any period in which he or she is away from home the child is **looked after** by the local authority. As far as practicable therefore, the local authority have a duty to safeguard and promote the child's welfare and to facilitate contact with his or her parents unless, where there is no direction as to contact, this would not be in the child's interests during the assessment. They should have regard to the child's views, taking into account his or her age and maturity, and to those of the child's parents and other relevant people. They must also have regard to the child's religious persuasion, racial origin and cultural and linguistic background, when making arrangements for the child's care and accommodation. *Section 17(6)(c)*
Section 17(1)
Section 17(4)(a) & (b)
Section 17(4)(c)

The child's consent to medical treatment

29. The Age of Legal Capacity (Scotland) Act 1991 gives a child under sixteen years the right to consent to any surgical, medical or dental procedure or treatment if, in the opinion of a qualified medical practitioner, he or she is capable of understanding the nature and possible consequences of such procedure or treatment. The local authority should ensure that if the child is of an appropriate age and understanding he or she is aware of his or her rights under the 1991 Act, as well as under the Children (Scotland) Act 1995 and that he or she has sufficient information, both verbally and in writing, to make informed choices about giving or withholding consent to all or part of an assessment. *Section 90*

Responsibilities of the local authority after the making of the child assessment order

30. As soon as the child assessment order is made, the local authority should discuss with the child's family how the assessment is to be conducted. Even though parents are obliged to comply with the assessment on the basis of the child assessment order, the local authority should attempt to inform and involve them as far as possible in making the necessary arrangements. Parents retain their responsibility for their child and their active involvement is likely to help the child take part in the assessment with fewer anxieties.

31. The family may be anxious and may be more reassured if some or all of the assessment is carried out by a professional they already know and trust. Professionals who know the family should be consulted about the best way to obtain the information needed. The local authority should consider issues of gender, race and

culture when considering how and by whom assessments should be carried out. Parents' reluctance to use local child health services is unlikely to be a sufficient reason for applying for a child assessment order unless it is clear that, as a result, the child is likely to suffer significant harm. For example a child with a fluctuating medical condition may require monitoring to prevent deterioration.

32. When they have completed the assessment the local authority should consider carefully in conjunction with other professionals and the family, what, if any, further action is required. There may be one of the following outcomes

- the assessment concludes that there is no cause for concern about the child's safety or welfare, and no need for further involvement from the local authority
- findings suggest that although the child is not at risk, he or she may have other problems and be in need of further help
- findings indicate that there is demonstrable risk to the child and the local authority should continue to work with the family
- findings are inconclusive and further information is required.

33. The local authority should inform the family of the results of the assessment at the earliest opportunity. If the assessment has established that the child is at risk of harm, the authority may

- consider whether the child is in need and should be provided with support services
- hold a child protection case conference to decide whether the child should be placed on the child protection register and a child protection plan made
- in an emergency apply for a child protection order or an exclusion order
- refer the child to the Principal Reporter.

34. If findings are inconclusive the local authority must decide, on the basis of the information obtained, whether one of the above options is necessary, whether the family should be offered further support and services on a voluntary basis or whether routine monitoring by health and education services will suffice. Whatever the assessment outcome, the family should be informed in writing of the local authority's views and intentions. If the assessment indicated that the child is not at risk the local authority should assure parents of this and offer acknowledgement of the inevitable disruption and distress which such proceedings cause.

The Child Protection Order

Introduction

Sections 57-60

35. The purpose of the new child protection order is to ensure that where it is necessary urgent action can be taken to remove a child to a place of safety or to prevent the removal of a child from a place where he or she has been accommodated.

Main features of the child protection order

36. These are as follows

- any person will be able to apply to a sheriff for a child protection order under section 57(1) of the Act
 - additionally, a local authority will be able to apply for a child protection order under section 57(2) of the Act
 - the sheriff will not make a child protection order unless he or she is satisfied that the conditions for making the Order are met
 - the conditions which have to be met in relation to section 57(1) applications are that there are reasonable grounds to believe that the child
 - (a) is being so treated (or neglected) that he or she is suffering significant harm; or
 - (b) will suffer such harm if he or she is not removed to and kept in a place of safety or if he or she does not remain in the place where he or she is being accommodated; and
 - (c) a child protection order is necessary to protect the child from such harm or such further harm.
 - the conditions which have to be met in relation to an application under section 57(2) are
 - (a) that there are reasonable grounds to suspect that a child is being or will be so treated (or neglected) that he or she is suffering or will suffer significant harm;
 - (b) the local authority are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child; and
 - (c) that those enquiries are being frustrated by access to the child being unreasonably denied, the authority having reasonable cause to believe that such access is required as a matter of urgency.
- Section 58*
- the sheriff may make directions as to contact with the child and/or medical or psychiatric examination or assessment or treatment.
 - the duration of the Order is limited to a maximum of eight working days until a children's hearing meet in accordance with section 65(2) of the Act.
- Section 60(3)*
- a child who is the subject of a child protection order shall not be: kept in a place of safety; prevented from being removed from any place; or subject to any term or condition contained in the Order or any direction made by the sheriff, where the Principal Reporter considers that, following a change in circumstances or receiving further information relating to the case, the conditions for making a child protection order are no longer satisfied or the term, condition or direction is no longer appropriate
- Section 59*
- a children's hearing may decide to continue or not to continue the Order at the initial hearing of the child's case
 - certain persons may apply for the discharge or variation of the Order or any directions attaching thereto. The persons are: the child to whom the Order relates or someone acting on his or her behalf; a person having parental
- Section 60(7)*

rights over the child; a “relevant person” (see section 93(2)); any person to whom notice of the application for the child protection order has been given; and the applicant for the child protection order

- Section 57(7)*
- a child who becomes the subject of a child protection order and is removed to a place of safety provided by a local authority, is considered to be looked after by the local authority concerned.

Who can apply for a child protection order and the grounds for application

Section 57(1) 37. Any person may apply to a sheriff for a child protection order. Any person could include a local authority, a police constable, a teacher, a relative or friend of the child. In practice most applications are likely to be made by local authorities, but on occasion, another statutory body or a concerned relative or neighbour may want to act to protect a child. Applicants should reasonably believe that the grounds for making a child protection order are satisfied and that such an Order is necessary to protect the child from significant harm.

Section 57(2) 38. The Act also provides for an application by a local authority in particular circumstances. The sheriff will grant this Order only if he or she is satisfied that the local authority has reasonable grounds to *suspect* the child is suffering or will suffer significant harm because of ill-treatment or neglect (as opposed to their believing that the child has suffered or will suffer significant harm). The sheriff must also be satisfied that the local authority are making or causing to be made enquiries to allow them to decide whether they should take any action to safeguard the welfare of the child and that those enquiries are being frustrated by access to the child being unreasonably denied. Moreover the local authority must have reasonable cause to believe that such access is required as a matter of urgency. The purpose of a child protection order under these grounds is different from a child assessment order in that in the former case there will be a belief that access to the child is required as a matter of urgency, where enquiries cannot be completed because the child cannot be seen but there is enough cause to suspect the child is suffering or likely to suffer significant harm. A child assessment order applies where there is a need for an assessment of the child’s health and development but where he or she is not thought to be in immediate danger.

Section 57(2) 39. When an application for a child protection order is made by a local authority under this particular section, the court will have to decide whether a parent’s or carer’s refusal to allow access to the child was unreasonable in the circumstances.

Section 16(1) 40. As with all Orders under the Act the sheriff will not automatically make a child protection order. He or she must still make the welfare of the child the paramount consideration. The sheriff will also wish to know why urgent action is necessary, whether, if removal of the child is justified, it can be achieved with the co-operation of the parents and whether a decision can wait until the parents have had an opportunity to prepare their case properly for presentation at a children’s hearing. The applicant will be expected to give as much of this information as possible in the application form for the Order or orally to the court.

Steps for consideration by a local authority before applying for an order

41. Before deciding to apply for a child protection order there are a number of matters which local authorities should, as far as practicable, consider

- an assessment of the alternatives to an application for the Order
- the ascertainable wishes and feelings of the child having regard to the child's age and understanding
- the child's physical, emotional and educational needs, including any special needs during the period of the Order, if made
- the likely effect on the child of a change in circumstances which might result from the local authority applying for the Order
- the child's age, gender and family circumstances
- the circumstances giving rise to the application; the need for any directions relating to, for example, contact and assessments which the court may attach to the child protection order, if made
- the nature and effect of any other Orders or requirements already made in respect of the child, for example a residence order, contact order, or supervision requirement.

Applications for a child protection order

42. All applications for a child protection order must be made to a sheriff. Justices of the peace *cannot* make child protection orders (although they can authorise the use of emergency child protection measures in specific circumstances). All applicants for a child protection order must demonstrate to the sheriff that the criteria for granting the Order are met. The application to the sheriff must identify the applicant and, as far as possible, the child. There must be a statement of the grounds on which the application is made and this must be accompanied by supporting evidence in written form or verbally. This information is necessary to enable the sheriff to determine the application. The sheriff will give such weight as he or she thinks appropriate to any relevant hearsay, opinions, social work and other relevant records and medical reports.

Sections 61(1) & 61(2)

Section 57(3)

The child protection order and what it may do

43. A child protection order may do one or more of the following things

Section 57(4)

- require any person in a position to do so to produce the child to the applicant
- authorise removal of the child by the applicant to a place of safety, and the keeping of the child in that place
- authorise the prevention of the removal of the child from any place where he or she is being accommodated
- provide that the location of any place of safety in which the child is being kept secret should not be disclosed to any person or class of person specified in the Order itself.

44. The applicant, in taking action required or permitted by a child protection order or by a direction attached thereto, must only act where he or she reasonably

Section 57(6)

believes that to do so is necessary to safeguard or promote the welfare of the child. There may be circumstances where the need to remove the child to a place of safety is not considered necessary to safeguard the child's welfare. This may happen, for example, in circumstances where the source of the harm or risk to the child is no longer present.

Section 60(1) 45. A child protection order lapses where no attempt has been made to implement it within twenty-four hours (excepting where the authorisation granted is to prevent the removal of the child from where he or she is accommodated).

Additional powers available to the sheriff

Section 58 46. When making a child protection order the sheriff is required to consider making directions concerning the contact the child may have with other named persons. The named persons can be any parent of the child, any person with parental responsibilities in relation to the child or any other specified person or class of person, for example, another member of the family, grandparents or other relatives of the child. A direction about contact may be made by the sheriff without it having been requested where the sheriff considers it necessary to safeguard or promote the welfare of the child. It may also prohibit contact with any person mentioned above. The local authority or other applicant should, therefore, in applying for a child protection order consider if it is in the interests of the child that a particular person should be prevented from seeing the child or whether contact with the child should be subject to certain conditions, for example supervision by the local authority.

Section 58(4) 47. An applicant can also apply to the sheriff for a direction in relation to the exercise or fulfilment of parental responsibilities or rights. Such directions could concern the medical, psychiatric or other assessment or interview of the child and any treatment arising from these. Conditions can be attached to these directions.

Section 58(5) For example, the sheriff may set a limit in relation to the number of examinations a child may undergo. However, notwithstanding that the sheriff has made such a direction in relation to examination or treatment, the Age of Legal Capacity (Scotland) Act 1991 preserves a child's right to withhold his or her consent where, in the opinion of a qualified medical practitioner he or she is capable of understanding the nature and possible consequences of the procedure or treatment. Any directions attached to child protection orders continue until the Order expires or the sheriff who has been asked to recall them does so.

Section 90

Service of the Order

Section 57(5) 48. The arrangements in relation to service of the making of a child protection order and applications for the variation or recall of the Order (or a direction attached thereto) are prescribed in Rules of Court. It is the responsibility of the applicant to serve notice. Advice about the provisions for seeking variation or discharge of the Order and about the provisions of section 60(8)(a) of the Act or the effect of this provision should also be given to the persons receiving notice of the making of the Order. That particular section provides that an application to set aside or vary a child protection order or a direction attached to it must be made before the initial children's hearing of the case. The Order is served on the child, any relevant person whose whereabouts is known, the Principal Reporter and, where the applicant is not a local authority, the local authority in whose area the child is resident. The need to inform parents of their rights and responsibilities

under the new Order is crucial. Explanatory notes should be served with a copy of the Order informing parents or the relevant person what will happen to their child and what they can do next.

The child's status

49. On the granting of a child protection order and the removal of a child to a place of safety provided by a local authority, the child becomes a child who is looked after by the local authority. As such, the local authority has specific duties to carry out, subject to any terms or conditions of the Order or any direction. So far as practicable they have a duty to safeguard and promote the child's welfare, to promote contact between the child and his or her parents where this is in the child's interests, to take account of the child's views having regard to his or her age and maturity and those of his or her parents or any person whom the authority consider to be relevant. They must also have regard to the child's religious persuasion, racial origin and cultural and linguistic background.

Section 57(7)

Section 17(6)

50. Where the local authority have no responsibilities as respects the child in relation to the Order, (that is they are not the holder of the Order and they do not provide a place of safety for the child), the child is not a child who is looked after by the local authority. The authority may, however, be able to offer help in safeguarding the welfare of the child.

Helping the child in a place of safety

51. When children are placed away from their families they will need reassurance and support. Attention to the following will help

- siblings should be placed together unless there are compelling reasons in their own interests for not so doing. If siblings cannot be placed together, their placement should be kept under review and reasonable contact between them, subject to any necessary supervision, should be facilitated
- allow children to take with them any personal possessions they wish or need
- in general, allow reasonable contact between a child in a place of safety and parents, relatives and friends (in accordance with any direction made by the sheriff regarding contact)
- make provision for the continued education of the child
- arrange for any necessary medical care for the child.

The role of the Principal Reporter and children's hearing in child protection orders

52. Notice of the making of a child protection order must be given by the applicant to the Principal Reporter who may, having regard to the welfare of the child, return the child to his or her family when, as a result of a change in circumstances of the case or if further information relating to the case having been received by him, he considers that the child protection order conditions are no longer satisfied or that the conditions or directions which were granted with the child protection order are no longer appropriate. If the Principal Reporter so decides then he must notify the person who implemented the Order and also the sheriff.

Section 60(3)

Sections 60(2) & 60(5)

Section 59(2)
Section 59(4) 53. If there is no application to the sheriff for variation or recall of the child protection order and the Principal Reporter does not return the child, he will arrange a children’s hearing to meet on the second working day after the child protection order is implemented. At this initial early hearing a decision will be made on whether to continue the Order in the interests of the child. If the hearing does not continue the child protection order, the child will be returned home. That particular hearing can also decide whether or not to continue or vary any direction attached to a child protection order. If the children’s hearing decide to continue the Order, the Principal Reporter will arrange for a children’s hearing to take place on the eighth working day after the Order was implemented to hear the grounds of referral.

Advice hearing

Section 60(10) 54. If there has been an application for variation or recall of the child protection order or any direction, the Principal Reporter can, after receiving notice of such application but before the sheriff has determined the application, arrange a children’s hearing in order to provide advice to the sheriff in his determination of the application.

Setting aside or varying a child protection order

55. A child protection order may need to be made without the child’s parents or other relevant persons being given an opportunity at that stage to be heard or to refute any evidence presented in support of the application.

Section 60(7) 56. The Act however provides for an application to be made to the sheriff to set aside or vary a child protection order or any direction attaching thereto. The application can be made immediately and before an initial children’s hearing by or on behalf of

- the child to whom the Order or direction relates
- a person having parental rights in relation to the child
- a relevant person
- any person to whom notice of the application for the Order was given
- the applicant for the Order.

Section 60(8)(b) 57. An application can also be made to vary or recall the child protection order at a slightly later stage, that is at the stage when an initial children’s hearing have decided to continue the Order. Any such application must be made within two working days of such a continuation.

Section 60(12) 58. When considering an application for variation or recall of a child protection order or a direction, the sheriff can confirm or vary the Order or any term or condition on which it was granted, confirm or vary any direction given in relation to the Order; give a new direction; continue in force the Order and any direction or recall the child protection order and cancel any direction.

Exclusion Orders

Introduction

59. The exclusion order is a new addition to the statutory measures available to protect children from significant harm or the threat of harm, by excluding an alleged

abuser from the family home. An exclusion order has the effect of suspending the named person's rights of occupancy (if any) to the family home in question. It also prevents the person - whether an occupier or not - from entering the home, except with the express permission of the local authority which applied for the Order. A person named in an exclusion order may be the child's parent or a member of the child's family or anyone from whom it is considered necessary to protect the child from significant harm or the threat of harm. *Section 77(1)*

Main features of the exclusion order

60. These are as follows

- *only* a local authority is able to apply to a sheriff for an exclusion order in respect of a named person *Section 76(1)*
- an application for an exclusion order should be presented to the sheriff of the sheriffdom where the family home is situated *Section 80(2)*
- the sheriff will not make an exclusion order unless he or she is satisfied in relation to the child that the conditions for making the Order are met *Section 76(1)*
- the conditions which have to be met are
 - (a) the child has suffered, is suffering or is likely to suffer significant harm as a result of any conduct of the named person such conduct being actual, threatened or reasonably apprehended; *Section 76(2)*
 - (b) the Order is necessary for the protection of the child; and
 - (c) would better safeguard the welfare of the child than removing the child from the family home.
- pending the making of a final exclusion order the sheriff may grant an interim exclusion order with the power to grant warrants and interdicts as appropriate before intimation *Section 76(4)*
- before an exclusion order is finally determined the person to be excluded (the named person) must be afforded the opportunity to be heard by or represented before the sheriff in accordance with Rules of Court *Section 76(3)*
- the sheriff will be able to attach a power of arrest to an interdict granted on an interim or final exclusion order *Section 78(1)*
- an exclusion order will endure for a maximum period of six months and will not be renewable *Section 79(1)*
- the sheriff may make a child protection order on an application for an exclusion order where he or she considers that the conditions for doing so are satisfied. *Section 76(8)*

61. The sheriff may decide that an exclusion order is necessary, but he or she will not make the Order if it appears unjustifiable or unreasonable having regard to all the circumstances of the case. The sheriff will have to consider *Section 76(9)*
Section 76(10)

- the conduct of the members of the child's family
- the needs and financial situation of family members
- the extent to which the home is used for a family member's trade or profession and likely consequences.

Child’s view

Section 16(4)(b)(i) 62. The sheriff, when considering whether to make, vary or discharge an exclusion order, must give the child concerned, taking account of his or her age and maturity, an opportunity to express his or her views if he or she wants to and the sheriff must have regard to any views expressed. The means of taking the views of the child are for the sheriff to determine in accordance with the Rules of Court.

Grounds for child protection order

Section 76(8) 63. Where the sheriff considers that the conditions for making an exclusion order are not met or that it is otherwise inappropriate for such an Order to be made, he or she is empowered, taking account of the paramountcy of the child’s welfare to make a child protection order. If the sheriff considers that the conditions for making a child protection order are satisfied he or she may treat the application for an exclusion order as an application for a child protection order.

The use of exclusion orders

64. Local authorities may wish to consider applying for an exclusion order to protect a child in any number of circumstances. They should always bear in mind the need to consider applying for an interim Order under section 76(4). Illustrative examples are where

- there is acknowledgement, by the alleged abuser, that abuse has occurred but there is no apparent reduction in risk to the child or other child in the family home
- a child has made a clear allegation implicating the person, the child’s account is believed by the parent(s) (in the case of allegations against a parent, the non-abusing parent) but denied or minimised by the alleged abuser
- the child, or his or her parent(s) (where not the subject of the allegations) are afraid to remain in the family home with the alleged abuser
- where it is concluded that fear, distress or conflict of loyalties caused by the alleged abuser’s presence in the family home appear to prevent the parent(s) (if not the subject of the allegation) from meeting the child’s needs and protecting the child from further harm
- there are clear indications of abuse of the child whether with or without direct allegations by the child, admissions by the alleged abuser or confirmation by a parent or sibling.

65. The initial stage of an investigation of allegations of abuse often prompts a crisis within a family. Fear, anxiety and anger may be present and the reactions of all family members may be unpredictable and volatile. There may be concern that the alleged abuser will attempt to persuade a child to retract an allegation of abuse and prevent effective intervention to protect the child.

66. An exclusion order is a civil order and therefore does not determine the guilt or innocence of any person named in the order in respect of the commission of any crime. In many cases there may be lack of corroboration as to acts of abuse alleged to have been perpetrated by the named person. As a result it may be often very difficult for the police to obtain evidence necessary to charge and arrest someone

for any crimes connected with child abuse. In some cases the Crown Office may decide that there is insufficient evidence or even where there is sufficient evidence that it would not be in the public's interest to prosecute. Where there are clear signs that the child has suffered, is suffering or is likely to suffer from significant harm as a result of abuse perpetrated by a person or persons who can be identified, the local authority should consider taking proceedings for an exclusion order. Where abuse has been reported to the police or to the Procurator Fiscal appropriate contact and liaison with these authorities is essential at that stage since it may be necessary to act very quickly in the child's interest, especially if there is a pattern of continuing abuse.

Steps before application

67. If a local authority has concluded that a child is at risk within the family home it should before applying for an exclusion order

- examine all the available options including exclusion of the alleged abuser to try to prevent the child from being exposed to further harm or the risk of harm. Assess the nature and degree of risk to the child if the alleged abuser remains in the family home - what may happen? - what would be the consequences for the child and for other members of the family?
- assess the possibility of achieving exclusion on a voluntary basis by negotiation and agreement with the alleged abuser. Any voluntary exclusion would have to be carefully documented
- in order to avoid compromising police inquiries, seek the advice of the investigating police officer and have an on-going dialogue with the police throughout the process. Ideally, any interview with the alleged abuser should be held jointly with the investigating police officer since discussion about the details of the alleged abuse may not be possible prior to a formal police interview having taken place
- at the same time ensure that such an interview avoids contaminating the evidential value of any information disclosed whether about the alleged abuser's activities or those of other people.

Interim exclusion order

68. Before the sheriff can determine an application for an exclusion order the person who is to be excluded (the named person) must be given an opportunity to be heard by the sheriff, either personally or through a representative and the sheriff must consider any views expressed by any person notified of the application. The sheriff has the power to make interim Orders before intimation and therefore in emergency situations it may be appropriate to seek an interim exclusion order prior to the sheriff's substantive hearing. In making an interim exclusion order, which is to all intents and purposes the same as an exclusion order after final determination, the sheriff will decide which ancillary Order such as interdict, ejection and regulation of contact should be made. Those presenting the application should always be aware of the need to consider addressing the sheriff on such matters.

Section 76(4)

Section 76(3)

69. The sheriff may make an interim Order at any stage of the application before finally determining it. If the sheriff judges that the full range of conditions is satisfied, and that the person who is to be excluded has not yet been heard or others on

Section 76(6) whom notice of the application are to be served had not received intimation, he may nevertheless grant an interim Order, pending intimation. An interim Order if granted can be implemented immediately, backed up by a range of enforcement powers including ejection and interdict. Where an interim Order is made before intimation to be named person, a hearing must be held within three working days of the making of the interim Order.

Ancillary warrants, interdicts, orders and the power of arrest

Sections 77 and 78 70. The responsibility for applying for any of the warrants, interdicts or orders to back up the exclusion order lies with the local authority, if they consider it necessary in the interests of the child. The sheriff may

- grant a warrant for the summary ejection of the named person
- grant an interdict prohibiting the named person from entering the home without the express permission of the local authority
- grant an interdict prohibiting the removal of any item specified from the home except with the written consent of the local authority or an appropriate person or by a subsequent order by the sheriff
- grant an interdict prohibiting the named person from entering or remaining in a specified area in the vicinity of the home
- grant an interdict prohibiting the named person from taking any step in relation to the child specified in the interdict
- make an order regulating contact between the child and the named person. (The sheriff can make this particular order irrespective of whether there has been an application by the local authority).

Section 77(3)(a) Where the sheriff grants a warrant of summary ejection when he grants an interim
Section 77(5) exclusion order, he may give directions about that person's belongings which remain in the family home.

Section 77(7) 71. Once the exclusion order has been made the named person or the local authority may apply to the sheriff to make the Order subject to such terms and conditions as he or she considers appropriate. The sheriff however will not grant any of the warrants, interdicts or orders under section 77 (with the exception of 77(3)(b)) which prohibits the named person from entering the home without the express permission of the local authority, if the person to be excluded satisfies the sheriff that it is unnecessary to do so.

Section 78(1) 72. The local authority when they apply for an exclusion order or at any time throughout its duration can apply to the sheriff to attach a power of arrest to any interdict granted. The sheriff may also on his own initiative attach a power of arrest to any interdict granted. Where a power of arrest is granted the local authority must notify the Chief Constable. Such a power of arrest does not have effect until the interdict and power of arrest have been served on the named person.

Variation and recall of exclusion order

Section 79 73. An exclusion order lasts for six months unless it contains a direction by the sheriff that it shall cease to have effect on an earlier date. The local authority, the

named person, the parent or parents or the person taking care of the child in the family home, and the spouse or partner may apply to the sheriff to discharge the Order. Application can also be made to vary or recall any warrant, interdict, order or direction made. The duration of an exclusion order cannot be extended but a further Order may be applied for. The views of the child must be sought in relation to the variation or recall of an exclusion order.

Serving the application

74. Under Rules of Court, the local authority is required to serve a copy of the application for an exclusion order on several people. They are

- the child in respect of whom the Order is sought (unless the sheriff decides otherwise)
- the named person
- safeguarder (if any)
- relevant person within the meaning of section 93(2)(b) of the Act
- the appropriate person (the person who will take care of the child in the family home if the alleged abuser is excluded)
- the Principal Reporter
- any other person whom the local authority consider has an interest in the application for example the family GP or the child's school.

The Rules of Court provide for service of the notice of the application for an exclusion order on the child unless service is dispensed with. This is to allow the child an opportunity to present his or her views. The forms of application should include an application for dispensing with service where it is considered that should be sought from the sheriff but this is a matter within the sheriff's discretion.

The form of intimation on a child is prescribed in the Rules of Court and they provide advice to the child as to the steps which may be taken to let the court know his or her views in relation to the application. These forms also invite the child to submit written views by completing part of the form and returning it to the court. The local authority will be obliged to provide the child with the appropriate form of intimation along with a copy of the application and this form will advise the child of his or her right to attend the hearing and with regard to matters such as representation and the expression of views. In addition, the local authority should arrange to explain the implications of the procedures involved and to provide any counselling which the child may require. It will be for the child to consider the route which he or she wishes to choose for intimating views to the court.

Intimation of the Order and variation

75. Where the sheriff grants an exclusion order the local authority in terms of the Rules of Court must serve a copy of the Order forthwith on

- the named person
- the appropriate person (within the meaning of section 76(2)(c))
- the child
- the Principal Reporter.

- Section 78* Rules of Court also make provision for the service of notices to the Chief Constable where interdict is granted on an interim application or on a final determination
- Section 79* and the sheriff has decided to attach powers of arrest to the interdict. Where there are applications for variation or recall of an exclusion order, the Rules of Court provide that intimation shall be given by the applicant to such persons as the sheriff may direct. Subject to the age and maturity of the child, the child's views have to be sought.
- Section 16(4)(b)(i)*

Action following exclusion order

76. An exclusion order can last for a maximum period of six months. This period is intended to allow the family the opportunity to consider how best to secure the welfare of the child or children in the longer term. The social work department will usually have a direct role to play. For example, where the named person is a parent or other family member, the social work department should work with the family members who remain in the family home supporting and helping them to look to future arrangements for the child. Moreover, while an exclusion order is in force, the local authority will have to satisfy itself about the child's continuing safety and welfare and keep parents fully informed and involved while doing so.

The named person

77. Exclusion may be the beginning of a process of detailed assessment of current and future risk and specialist therapeutic input for the family and the named person, as required. In such circumstances the local authority should be prepared to assess the degree of risk which the named person presents and ensure that he or she receives appropriate help whether or not he or she is a family member.

78. The local authority should discuss with the named person where he or she should go, for how long and what will happen in the interim. Although the person excluded, where he or she normally resides in the family home, must be responsible for the arrangements he or she makes for accommodation outwith the family home, the local authority may provide practical assistance and advice under powers available in the Social Work (Scotland) Act 1968 and other legislation, where this seems desirable. The social work department, should ensure, so far as is reasonably practicable, that the living arrangements of any named person do not place other children at risk of harm. Where the named person is a parent, the non-abusing parent may be exposed to financial hardship and should be assisted to claim benefits to which he or she may be entitled.

79. The named person may be vulnerable in his or her own right, particularly as a family member isolated from partner and family. The local authority should be alert to the possibility of health risk such as depression or self-harm and may send a copy of the application for an exclusion order to the family's GP, or where different, the named person's GP, who may need to be aware of the exclusion and the possible need for help. The GP should also be made aware of any referral which the local authority may have made to services such as Forensic Psychiatry.

80. Whether exclusion is effected voluntarily or compulsorily, the local authority should discuss with both parents the arrangements for any contact between the named person and the child who has allegedly been abused or is likely to be abused and/or any siblings where appropriate. Despite abuse, where the named person is a

family member there may be benefits for the child in having contact with the named person.

Overview of exclusion

81. The local authority should regularly review the need for exclusion to continue, taking into account the views of the child, other family members and, where the named person has parental responsibility, the capacity of the non-abusing parent to offer adequate protection to the child. The named person, where he or she has parental responsibility, should be informed separately of the outcomes of any child protection case conferences, child care reviews and children's hearings - if the child is the subject of a supervision requirement. He or she should be enabled to fulfil parental responsibilities in respect of the child in so far as this is practicable and in the interests of the child's welfare.

Emergency Child Protection Measures

Introduction

82. Section 61 of the Act makes provision for a local authority and any other person to make application in an emergency to a justice of the peace for an authorisation to remove a child to a place of safety or to prevent a child being removed from a place where he or she is being accommodated. The justice of the peace may authorise such action where certain criteria are met. An authorisation granted by a justice of the peace would only allow the child to be kept in a place of safety for a maximum of twenty-four hours. *Section 61(4)*

83. The Act also empowers a constable to remove a child to a place of safety for a maximum of twenty-four hours without the authorisation of a justice of the peace where certain criteria are met. *Section 61(5)*
Section 61(6)

84. One of the criteria to be met in both cases concerns the availability of sheriffs to consider applications for child protection orders. Arrangements are presently in hand, as part of an initiative being undertaken by the Scottish Court Service, to provide facilities from 1 April 1997 for sheriffs to deal with applications for child protection orders outwith normal working hours. This should minimise the need to use emergency child protection measures.

85. The Emergency Child Protection Measures (Scotland) Regulations 1996 make provisions concerning the duties of any person removing a child to, or keeping him or her in, a place of safety.

Criteria to be met for the granting of an emergency child protection authorisation

86. On the application of any person, a justice of the peace may grant an authorisation where he or she is satisfied:

- (a) that the conditions for making a child protection order under section 57(1) or section 57(2) are satisfied and that it is probable that if a child protection order was made it would contain an authorisation either to remove and keep the child in a place of safety or prevent the removal of the child from any place where he or she is being accommodated; but

- (b) that it is not practicable in the circumstances for a child protection order application to be made to the sheriff or for the sheriff to consider such an application.

The authorisation and what it may do

- Section 61(3)* 87. An authorisation granted by a justice of the peace may:
- (a) require the child to be produced;
 - (b) prevent any person from removing the child from the place where he or she is then being accommodated;
 - (c) authorise the applicant to remove the child to a place of safety and keep him or her there until the authorisation expires.
- Section 61(4)* 88. There are very strict time limits applying to these authorisations. They would cease to have effect twelve hours after being granted if within that time arrangements had not been made to do either (b) or (c) above. Where either of these things had been done, the authorisation would cease to have effect twenty-four hours after being granted or when an application for a child protection order had been disposed of. Moreover, a child may not be kept in a place of safety or prevented from being removed from any place if the Principal Reporter considers that the conditions for granting the authorisation are not satisfied or that it is no longer in the child's interest that he or she should be so kept.
- Section 61(8)*
- Section 17(6)* 89. A child who is the subject of an authorisation in accordance with which the local authority have responsibilities would be a child who is looked after by the local authority.

Police powers to take a child to a place of safety

- Section 61(5)* 90. The police are given powers under the Act to protect children in emergency situations. Where a police constable has reasonable cause to believe
- that the criteria for making a child protection order under section 57(1) are satisfied
 - that it is not practicable to apply for such an Order from a sheriff or for the sheriff to consider such an application; and
 - that it is necessary to remove the child in order to protect the child from significant harm,
- Section 61(6)* the constable may remove the child and keep him or her in a place of safety. This power for the police constable to remove and keep a child in a place of safety lasts for a maximum of twenty-four hours. The authority to keep a child in a place of safety ceases on the disposal of an application to the sheriff for a child protection order. As with authorisations granted under this section, a child may not be kept in a place of safety under the powers conferred on a constable if the Principal Reporter considers that the conditions for the exercise of that power are not satisfied or that
- Section 61(8)* it is no longer in the child's interest that he or she should be so kept. The constable may keep a child in a place of safety only so long as he or she has reasonable cause to believe that the conditions at (a) and (c) above are satisfied.
- Regulation 6*

Responsibilities of those using emergency child protection measures

91. The Regulations made under section 62 of the Act specify, among other things, the persons who should be notified and the information about which they should or may be notified where a child has been removed to a place of safety by a constable or where a justice of the peace has granted an authorisation to protect a child.

92. The Regulations also provide that the person taking emergency protection action should do what is reasonable in all the circumstances to safeguard the child's welfare. Where a child has been taken to a police station as a place of safety, all that is reasonably practicable in the circumstances should be done to take the child to another type of place of safety.

93. The Regulations also deal with the arrangements for giving notice where an authorisation ceases to have effect; for informing and taking account of the views of a child who is subject to emergency protection measures and certain other matters related to the child's welfare; and for allowing contact with a child who is subject to emergency protection measures.

Short-term Refuges for Children at Risk of Harm

Section 38 1. Local authorities and persons carrying on residential establishments may provide short-term refuge in designated or approved establishments and households for children who appear to be at risk of harm and who request refuge. Refuge will provide children with somewhere safe to stay and access to advice and help for a short period in order to resolve the crisis which led to the child seeking refuge and to reconcile him or her with family or carers or to divert the child to other suitable services or accommodation.

2. The main features of this provision are as follows

- provision of refuge may only be given where a local authority or authorised provider is satisfied that a child appears to be at risk and the child requests it
- while a child is being provided with refuge certain enactments concerning “harbouring” and related offences are disapplied
- refuge may be provided for a period of up to seven days or, in exceptional and limited circumstances, for a maximum of fourteen days
- a voluntary or independent organisation operating an establishment registered under section 61 of the Social Work (Scotland) Act 1968 may, if approved for the purpose by the local authority to provide refuge in the registered residential establishment.

This provision is distinct from the other duties conferred on local authorities to protect children and refuge should not be provided as an alternative to exercising their other responsibilities and powers under the Act.

Forms of refuge

Section 38(1)(a)(i) 3. There is statutory provision for three forms of refuge. Where it appears to a local authority that a child is at risk of harm they may, at the child’s request, provide him or her with refuge in a residential establishment controlled or managed by them, if that establishment is designated by the local authority as a suitable place of refuge. Alternatively the local authority may designate the household of a foster family or other approved carer as a suitable place of refuge for a child at risk of

Section 38(1)(a)(ii) refuge. Alternatively the local authority may designate the household of a foster family or other approved carer as a suitable place of refuge for a child at risk of harm and arrange for the foster carer or approved carer to provide the child with refuge in their household. The local authority may also approve the use of a registered residential establishment run by a voluntary or private agency for the purposes of providing refuge for children. The owner or staff of such an approved residential establishment may provide a child with refuge at the child’s request, if the child appears to be at risk of harm. All forms of short-term refuge are subject to The Refuges for Children (Scotland) Regulations 1996.

Section 38(1)(b)

Children seeking refuge

4. Children may seek refuge in response to many different problems. They may be in conflict with their families, or being abused or neglected, or distressed by their

present circumstances. They may already be living away from home in accommodation provided by a local authority. They may be troubled by difficulties at school, problems with drugs or alcohol, pregnancy or offending. Refuge services should be able to respond promptly and sensitively to the wide range of problems which cause children to run away and seek refuge from those looking after them.

Period of refuge

5. A child may be provided with refuge for a period not exceeding seven days. In exceptional circumstances prescribed in the Regulations (see paragraph 6 below), refuge may be extended for a period not exceeding fourteen days. During these periods none of the enactments in force relating to harbouring of children under sixteen will apply to persons providing the child with refuge.

Section 38(5)

Section 38(3) & (4)

6. The prescribed exceptional circumstances, in which a period of refuge may be extended beyond seven days, for up to fourteen days, are where

Regulation 11

- a responsible person in relation to the child has not been found within a period of seven days from the first day on which the child was provided with refuge
- at the end of that period of seven days the local authority do not at that time have suitable accommodation for the child.

7. If these circumstances persist beyond a total period of fourteen days the local authority should make other appropriate arrangements for the care of the child. The authority may provide accommodation for the child. The child would then be looked after by the local authority.

Section 25

Section 17

Legal status of children in short-term refuge

8. The legal status of children in short-term refuges does not change because they are being provided with refuge. They are not looked after by the local authority unless they are already looked after by virtue of a supervision requirement or any order, authorisation or warrant under Part II of the Act. Any measures which apply to the child, such as a supervision requirement, remain in force. The child's parents retain parental responsibilities and rights in respect of him or her, although their capacity to exercise these is limited during the seven day period of refuge. When the local authority arranges for a person to provide refuge for a child in an approved and designated household, the child shall not be regarded as a foster child for the purposes of the Foster Children (Scotland) Act 1984 solely because they are provided with refuge.

Sections 1 & 2

Notifications required when a child is given refuge

9. Any person who provides a child with refuge in an approved voluntary or independent establishment is required to notify

Regulation 8(4)

- the local authority in which the refuge is situated
- the authorised officer, being a police constable (at the local police station)

of the child or young person being given refuge in their establishment as soon as reasonably practicable, and, in any event, within twenty-four hours of the child being provided with refuge.

Regulation 8(4) 10. When giving notification of providing a child with refuge in their establishment, the person providing refuge should also notify the local authority and the authorised officer of

- the name and last permanent address, if known, of the child admitted to the refuge
- the name and address of any responsible person or persons in relation to the child as far as he or she has been able to obtain this information
- a telephone number at which he or she may be contacted by the local authority or the authorised officer.

Regulation 8(7) If the person providing refuge later discovers information about the child's address or family which was not previously known, he or she should inform the local authority and the authorised police officer as soon as possible.

Regulation 8(6) 11. A local authority which provides refuge, or arranges for a person to provide refuge in a designated household, should as soon as reasonably practicable and, in any event, within twenty-four hours of the child being provided with refuge, notify the authorised officer of the child's admission to their establishment or designated household. The local authority should provide the authorised officer with the information listed in the previous paragraph.

12. Notifying the authorised officer that a child is being provided with refuge ensures that police time is not wasted in searching for a child or young person reported missing. Children who seek refuge are likely to be missed from their home or accommodation at an early stage and may be reported to the police as missing. Where a family has reported their child missing and the authorised officer is notified that the child is in a place of refuge, he or she should alert the local police in the area in which the child normally lives. The police can then inform the child's family that the child is being provided with refuge. Local authorities and the police should jointly consider local arrangements for the notification of the authorised officer in relation to places of refuge in their area.

13. Local authorities should ensure that any designated or approved establishments and households in their area have the name, address and contact telephone number of a designated officer in the social work department whom the person providing refuge should notify of any child's admission to their establishment or household. The person providing refuge should also know how to contact the social work department's emergency or out-of-hours service in order to inform the local authority that a child is being provided with refuge and to obtain advice and social work help, if necessary.

Definition of a "responsible person"

Regulation 2(1) 14. For the purposes of this section and related Regulations, a "responsible person" in relation to a child means

- a parent of the child
- a person who is not a parent of the child but who has parental responsibility in respect of the child
- any person who ordinarily has charge of, or control over, the child

unless another person has care of the child as mentioned below

- any person (excluding a local authority) who for the time being has responsibilities as respects the child by virtue of an order made, or authorisation or warrant granted, under Chapters 2, 3 or 4 of Part II of the Act
- any local authority looking after a child in terms of section 17(6) of the Act
- any person (including a local authority) providing accommodation to a child looked after by a local authority by any of the means specified in section 26 of the Act.

Notifications in writing

15. Where a local authority has provided or arranged refuge for a child, or are notified by a person providing refuge for the child in an approved residential establishment, the local authority must inform in writing as soon as reasonably practicable

Regulation 8(8)

- a responsible person in relation to the child
- the local authority in whose area the child had his or her last permanent address,

that the child has been admitted to a refuge.

16. Written notifications are required to inform these parties that the child is being provided with refuge. The local authority are not required to inform the responsible person of the location of the place of refuge, and may decide not to do so if there is any reason to suspect that this would place the child, other residents or the person providing refuge at risk of harm. The local authority should take into account the views and wishes of the child, the person providing refuge and the need for places of refuge to be protected, when deciding whether to inform a responsible person, the child's family or any other party of the location of the place of refuge.

17. Notifications should include the provision in the Act under which refuge is provided and the address and telephone number of the social work department of the local authority in which the refuge is situated, from whom they may seek further advice and information. The local authority should also ask the child's family to provide a contact telephone number for the person providing refuge so that he or she, or the child, may contact the family directly. The social work department should also make direct contact with the family, either by telephone where a number is available or by visiting the child's home address. If the child and his or her family live in an area covered by another local authority then the child's home local authority should establish contact with the child's family as soon as possible.

18. If the child is already looked after by a local authority which is not the local authority for the area in which the refuge is situated, the local authority should notify the child's home authority, as a responsible person, as soon as reasonably practicable. In these circumstances, notification should be given within twenty-four hours of the child's admission to a refuge, and confirmed in writing as soon as possible thereafter.

Regulation 8(8)

Other matters

19. The 1996 Regulations contain details of the arrangements for issue of certificates of designation or approval of establishments and households,

Regulation 7

Regulation 8(2) & 8(3)

Regulation 10

requirements upon persons to notify the local authority of information about changes in their circumstances, and the circumstances in which the local authority may withdraw designation or approval. The Regulations allow local authorities flexibility in determining their criteria for designating and approving places of refuge, and discretion, in individual cases, in deciding whether to withdraw a certificate of designation or approval under the relevant circumstances. These are self-explanatory and local authorities should refer directly to the relevant Regulations.

Providing Refuge

The decision to provide refuge

20. The local authority or other persons in approved establishments may decide to provide refuge for a child in circumstances where, for example

- the child has run away from his or her current carers, either family members or local authority accommodation and there are no other safe adults amongst his or her family or friends with whom he or she can stay
- the child would be at risk of harm if refuge were not provided
- the local authority is not immediately able to assist the child by the exercise of other duties or powers under the Act.

21. The risk to which the child appears to be exposed might relate to the situation from which he or she is seeking refuge, such as bullying or victimisation by peers, or it might result from risks he or she would run if refuge were not provided. The local authority may not have sufficient information to exercise other statutory duties or powers, or the child may be unwilling to make use of other services or help before being given refuge. Providing a period of short-term refuge enables the local authority to gather relevant information and help the child decide the best course of action.

22. A child may not ask for short-term refuge using precisely those words but may approach adults with a general request for help. When the child asks for help the person receiving the request should

- explore with the child the nature of the problem which has led to him or her seeking help
- find out whether what the child is asking for is short-term refuge
- find out whether and in what way the child is at risk of harm
- consider, with the child, whether any other forms of help may be more appropriate
- seek and take into account the views and wishes of the child about what should happen.

If the child is clearly asking for refuge rather than other forms of help and would appear to be at risk of harm were refuge not provided then the local authority, or any person who owns or manages an approved establishment, may offer the child refuge.

23. A child aged eleven years or under should normally be provided with short-term refuge in an approved household, with a foster carer or other approved carer, rather than a residential establishment.

24. There is a distinction between children using refuge provision and those in ordinary residential or foster placements. Most children in refuge will return to their homes and families with support from other agencies, including the local authority where necessary. Some children who are at risk of significant harm within their families may be subsequently looked after by virtue of a supervision requirement or other order under the Act. Others may be offered accommodation by the local authority. The local authority should take care to ensure that by providing refuge they do not increase the likelihood that the child will drift into a longer-term placement in local authority accommodation.

25. If a responsible person in relation to the child has been found the local authority may not extend the period of refuge. A child may only remain in refuge without their parent's consent, or that of the responsible person, for a maximum of seven days. The local authority should then seek other arrangements for the care of the child or facilitate the child's return to his or her family.

When parents do not consent to refuge being provided

26. When a child has been provided with refuge the local authority must notify a responsible person in relation to the child. If the responsible person holds parental responsibilities and rights and does not wish the child to remain in the refuge, and the child does not want to return home, the local authority must decide whether the child would be at risk of harm if he or she returns to the care of the responsible person. They may decide to take one or more of the following courses of action

- if the local authority have cause to believe or suspect the child would be at risk of *significant* harm they should apply for a child protection order or child assessment order
- if they think the child would be at risk of harm, and the child wishes to remain, they may keep the child in a place of refuge for up to seven days
- if they think there may be a need for compulsory measures of supervision in respect of the child, the local authority should refer the case to the Principal Reporter
- if the local authority do not think the child would be at risk of harm they should help the child to return to the care of the responsible person.

Planning for the end of the refuge period

27. Before the seven day period ends the local authority or the person providing refuge in an approved establishment must decide, with the child and his or her family, what to do next. In exceptional circumstances they may decide to extend the period of refuge. If this does not apply the local authority may do one or more of the following

- help the child return to his or her family or other carers
- take action under other sections of the Act to protect the child from significant harm *Sections 55, 57 & 76*
- provide the child with accommodation *Section 25*
- provide services to the child or his family under the provisions for children in need *Section 22*
- refer the case to the Principal Reporter. *Section 53*

28. Local authorities may provide refuge for a child more than once if the criteria for providing refuge are met. However if a child repeatedly asks for refuge this indicates that the child is experiencing problems with which he or she needs more sustained help. If a local authority have provided refuge for a child on two or more occasions, the responsible local authority should consider with the child and his or her family or carers, what other services and support may be provided to reduce the likelihood of the child running away in future. The local authority should identify with the child the risk of harm to which he or she is exposed and take action to address this. If it does not appear that the child is at risk of harm, the local authority may not provide him or her with refuge.

Providing sixteen to seventeen year olds with refuge

Section 25(7)

29. The local authority may provide young people over sixteen with accommodation and services, if this would safeguard and promote their welfare, without requiring their parents' consent. This may be a more appropriate means of meeting their needs than providing short-term refuge. Offences of harbouring and provisions for the protection of children at risk of significant harm or supervision of children, on the grounds of lack of parental care or other grounds involving risk of harm, do not apply to sixteen and seventeen year olds unless they are already looked after by virtue of a supervision requirement made by a children's hearing or are referred to a children's hearing by virtue of other provisions. Short-term refuge may be provided to sixteen to seventeen year olds who have run away from local authority accommodation.

Section 93(2)(b)

Section 33

Children who need protection

30. In some cases when a child asks for refuge it will be evident that he or she is in need of care and protection because of neglect or abuse within his or her family. If a child asks for refuge directly from a person who provides refuge, other than the local authority, that person should explain to the child that, in order to ensure the child's safety, he or she must seek help from the local social work department. Staff and carers in designated or approved establishments and households should be familiar with local child protection procedures and know whom to contact when they believe that a child may be in need of protection.

Section 53

31. Where a local authority believes a child to be at risk of significant harm they should consider exercising their other responsibilities and powers under the Act. When a child has approached the local authority directly and asked for refuge and it appears to the local authority that the child is being so treated (or neglected) that he or she has suffered or is likely to suffer significant harm, or that he or she may be in need of compulsory measures of supervision, the local authority should cause inquiries to be made into the case. If necessary, the local authority may apply for a child protection order, or other court order, or refer the case to the Principal Reporter.

Responsibilities of different local authorities

32. The responsibility for assisting the child and providing any services for the child and family which may be needed, during and after the period of refuge, rests with the local authority in which the child is ordinarily resident. This will be the

authority for the area in which the child's family or usual carers live, unless the child is looked after by another local authority. In that case the authority which looks after the child remains the responsible authority. The responsible authority may ask the authority in which the refuge is situated to assist by undertaking inquiries or interviewing the child on their behalf.

33. When a local authority needs to exercise its powers to protect a child in refuge who is believed to be at risk of significant harm, the local authority in which the refuge is situated should agree with the child's home local authority, which of the authorities should apply for a child protection order, or other court order, in the first instance. In all cases the paramount consideration is to secure the safety and welfare of the child. Which authority initiates action may depend on whether the home local authority has previous knowledge of, or contact with, the child and his or her family, the distance of the refuge from the child's home area and any other relevant circumstances, including the capacity to implement the order, if granted, within the required period of twenty-four hours. Where the local authority in which the child is being provided with refuge makes the application, if an order is made, the child's home local authority should assume responsibility for looking after the child as soon as practically possible. Any referral to the Principal Reporter should be made to the Reporter in the local authority area in which the refuge is situated. The Reporter will make arrangements for any children's hearing to be held at an appropriate location, taking into account the circumstances of the case and in discussion with Reporter colleagues from relevant areas where more than one local authority is involved. Where the child is believed to be at risk of harm in their own family, the child's home local authority should establish contact with and interview the child's parents or carers as a matter of urgency.

Section 60

34. If there is a need to determine which local authority is the responsible local authority in respect of a child, the guidance relating to "ordinary residence" applies.¹

Help for Children in Short-term Refuge

35. The role of the local authority or any other person providing refuge under this section of the Act is to provide the child with somewhere safe to stay and any other services consistent with safeguarding the child's welfare.

36. In order to be an effective service for vulnerable children, places of refuge need to have available persons who are skilled in communicating with children in distress and who are able to help children make sensible decisions about their next course of action. They should be aware of the responsibilities of social work, health, education and the police, other local services for children and the role of the Reporter and the courts, and any other sources of help and advocacy available to the child, according to the range of problems which prompt children to ask for refuge.

37. The local authority or the person providing refuge should establish contact with the child's parents or home local authority at an early stage and begin discussions with all parties about how to resolve the problems which have caused the child to run away. In order to protect the integrity and safety of the refuge for all children placed there, meetings between the child and family or local authority or refuge staff and family members should not take place in the establishment or household

¹ Circular No. SWSG 1/96.

in which refuge is being provided. This should not prevent the possibility of direct contact between any of these people if this is in the child's interests. If necessary, the local authority in which the refuge is situated, or the child's home authority, should assist by providing facilities in which the child and/or refuge workers can meet with the child's family or carers if this is desirable. If the child's home authority is at some distance from the refuge, direct contact there may not be practicable but they may be able to provide transport or other assistance to parents or family members, or other carers, to meet with the child and/or the person providing refuge.

38. The local authority social work department should maintain close links with those providing refuge services in their area. When the local authority is notified that a child has been admitted to a refuge run by a voluntary or independent agency, they may arrange for a social worker to talk to the child to find out whether the local authority should offer help to the child or family, unless the person providing refuge is satisfied that this is not necessary.

Rights of children and parents

39. Children should not be required to disclose detailed information about their circumstances as a condition of access to a refuge. A child or young person in crisis will want speedy and easy access to a safe place. Staff will need to balance the need for information to assess the risk of harm to a child with the need to ensure that admission processes do not discourage vulnerable children from seeking help.

40. Parents and families may be worried about their child and should receive information and help to resolve any family problems which may have led to their child seeking refuge. Existing refuges have found that the majority of parents will allow their child to remain in refuge whilst problems are tackled as long as they are assured that the child is safe and well looked after whilst away from home. If a child runs away from accommodation provided by a local authority who is looking after him or her, that local authority should inform the child's family that he or she has run away. The child's family should be involved in any subsequent planning for the child.

41. The local authority cannot keep any child in refuge who no longer wishes to remain there. If it appears to the local authority that the child would come to harm if he or she left the refuge, they should consider whether to apply to a sheriff or refer the case to the Reporter.

Seeking refuge from local authority accommodation

42. If a child is looked after by a local authority and has run away from accommodation provided, the local authority who looks after the child should ensure that he or she has an opportunity to talk to an independent person about his or her reasons for running away. The child should not be compelled to talk to carers from the accommodation from which he or she has run away, or his or her usual field social worker, before he or she has had a chance to talk to an independent person. Some local authorities have Children's Rights Officers who might take on this role. The local authority which looks after the child may arrange for a social worker from the authority in which the place of refuge is situated to talk to the child, or make use of an independent advocate from a voluntary organisation concerned with children's rights. The child should feel that the person is properly independent of his or her placement as far as is practically possible.

43. Worries about victimisation or bullying by adult carers or peers should be taken seriously. No child should have to return to a local authority placement in residential or foster care if he or she is afraid to return. Allegations made by the child about abuse by adult carers or peers should be fully investigated under the responsible local authority's child protection procedures. If the problem which has led to the child running away from local authority accommodation cannot be resolved within the normal period of refuge then the local authority which looks after the child must make alternative arrangements for his or her care. Where a child is unwilling to return to his or her original placement the local authority should treat this as a complaint by the child, unless there are compelling reasons not to do so, and the complaint should be investigated under the home local authority's statutory complaints procedure. Even if the child does return to his or her previous placement, he or she should be given information about the local authority's complaints procedure and any necessary help to pursue a complaint if he or she wishes. No officer of the local authority should investigate any complaint about any of his or her own actions.

Designation or Approval of Establishments and Households

Local authority establishments

44. A local authority may designate a residential unit which they control or manage for the purpose of providing refuge to children. The 1996 Regulations require that the local authority satisfy itself that the establishment has suitable accommodation and facilities in which to provide refuge for a child, that the officer in charge of the establishment is a suitable person to have responsibility for a child and that appropriate services are available to the child whilst he or she is taking refuge in that establishment. The local authority should take into account the following matters when deciding whether to designate an establishment as suitable for the provision of refuge

Regulation 3(a)

Regulation 4

- the nature and size of the accommodation available
- the functions and objectives of the residential establishment
- the numbers, qualifications and deployment of staff.

45. Local authorities may decide to designate one or more places in an existing residential children's home or unit as places which may be used for children seeking refuge. If the establishment offers longer-term care for children who are looked after by the local authority, the local authority should consider whether the aims of the establishment are consistent with the provision of temporary refuge for children in crisis. Vulnerable young people already resident in the home or unit may find their routines and relationships disrupted by a rapid turnover of other young people entering their home in crisis. The needs of children placed in refuge will differ from the needs of children who are looked after and have a care plan. The needs of both should be kept in focus within a single setting.

46. Children seeking refuge will need a confidential service. It may be more difficult to protect the identity and location of a child in a short-term refuge in a local children's home, particularly in small authorities or rural areas. In some instances, the child may be seeking refuge from other accommodation provided by the local authority. In others, parents or other family members may go to the children's home to look for the child.

Households designated by the local authority

Regulation 3(b) 47. A local authority may arrange for a person, whose household is approved by virtue of section 5(3)b of the Social Work (Scotland) Act 1968 and designated by the local authority for the purposes of refuge, to provide a child with refuge under this section of the Act. This requires that the household be approved under the Fostering of Children (Scotland) Regulations 1996 (Fostering Regulations 1996).

Schedule 1 of Fostering Regulations 47. Before placing any child in a household for short-term refuge, the local authority should obtain information about the person and other members of his or her household and family, interview the person and be satisfied that he or she is a suitable person with whom to place children and that appropriate services are available to any child taking refuge in that household. The local authority may designate approved foster carers as suitable to provide refuge or designate households and approve persons specifically for the purposes of providing short-term refuge to children at risk of harm as long as such approval complies with the requirements of the Fostering Regulations 1996.

Regulation 4

48. A child may not be placed in a household which has not been approved under the Fostering Regulations 1996, and designated for the purposes of refuge. It would not be practicable for the local authority to satisfy itself of all the particulars detailed in the Schedules to the Regulations, and complete the necessary criminal records checks, within the period of seven days allowed for refuge. Where it seems appropriate to the local authority to place a child with a relative or friend, who is not already an approved foster carer, the authority may do so under other provisions of this Act, having regard to all the circumstances of the case. At any time, the local authority may designate the household of an approved foster carer as suitable for the purpose of providing refuge where they are satisfied as to the matters specified in regulation 4 of the Regulations.

Section 26

49. Only the local authority may arrange for a child to be provided with refuge in a household. Persons providing refuge in households approved by the local authority will require supervision, training and support, consistent with that for emergency foster carers, to cope with the immediate needs of children and young people in crisis. The local authority will have to judge to what extent persons providing refuge in their household are equipped to work directly with the child and his or her family to resolve the problems that caused the child to run away. They should take into account the safety and welfare of any children and other family members in the household when deciding whether to inform a responsible person of the address of the household.

Voluntary or independent residential establishments

Regulation 5 50. The local authority may approve the use of an establishment, or part of an establishment, run by a voluntary organisation or any other person, for the purpose of providing short-term refuge for children at risk of harm. The establishment must be registered by the local authority as suitable to provide personal care and support for the purposes of the 1968 Act. The person who runs the registered establishment should apply to the local authority in writing for approval to provide refuge. The local authority should make such inquiries as they see fit as to whether the person is a suitable person with whom children could be placed for the purposes of short-term refuge. The local authority's inquiries should use the same criteria for approval of an establishment as they would apply if designating one of their own establishments as suitable for refuge.

Section 61(2) Social Work (Scotland) Act 1968

51. A person who carries on or manages an approved residential establishment may provide a child with refuge without seeking the permission of the local authority. They have a duty to notify the local authority and the police of the child's admission to the refuge as soon as reasonably practicable and should work closely with the responsible local authority in helping the child to tackle the problems which have caused him or her to run away.

Inspection and review

52. Local authorities should visit residential establishments designated or approved for the purpose of providing refuge to children in accordance with the requirement to inspect their own and other, registered, establishments. While it is up to local authorities to determine the number of visits per establishment, two visits per year is the normal minimum requirement. Concurrently, they should review whether the establishment continues to be suitable for the purposes of providing short-term refuge having regard to the matters specified in regulation 4.

Regulation 9

53. The local authority should review whether a person whose household is approved for the purpose of providing refuge remains a suitable person to provide refuge in his or her household and should notify the person of their decision in writing. Intervals between reviews should be not more than one year.

Regulation 9

Representations and Complaints

*Section 5B Social Work
(Scotland) Act 1968*

1. Local authorities are required to have procedures for considering representations or complaints about the discharge of any of their social work functions, including those for child care services.¹ Systems are now in place in all authorities. Representations or complaints may be made by the child, his or her parents or anyone else with parental responsibility, any carer including foster carers or any person who has a legitimate interest in the child's welfare.
2. Social work departments should provide children and young people, and their families with information that they can use about how to comment on or make a complaint about the service they have received. The Act requires that children's views are taken into account when decisions are being made which affect them. Children's rights services may help young people and children in expressing their views and being heard. Some children may require particular support in expressing views or making a complaint if they have communication difficulties or other problems.
3. Local procedures should be well publicised and easily accessible. The complaints procedure and any other local procedures and guidance about services should allow for any complaint to be resolved quickly and as close as possible to the point of service about which there is concern or dispute. No officer of the local authority should investigate a complaint about any of his or her own actions or judgement. Complainants should always receive a written response to their complaint.
4. The views of service users can provide local authorities with information which can help to improve the management and quality of their services. Local authorities should encourage and help service users and their families and carers to comment on and make suggestions about the service they have received. This will include using information from complaints in a constructive manner to influence changes in services.

¹ For guidance on local authority complaints procedures see Circular No. SWSG 5/1996 and the Social Work (Representations Procedure) (Scotland) Directions 1996

Regulations and Directions

The Plans for Services for Children Directions 1996

The Secretary of State, in exercise of the powers conferred on him by section 19 of the Children (Scotland) Act 1995(a) and section 5(1A) of the Social Work (Scotland) Act 1968(b) and of all other powers enabling him in that behalf, hereby gives the following Directions:-

Citation and commencement

1. These Directions may be cited as the Plans for Services for Children Directions 1996 and shall come into force on 1st April 1997.

Interpretation

2. In these Directions—

“the 1995 Act” means the Children (Scotland) Act 1995;

“independent sector providers” means any provider of relevant services for or in respect of children other than—

- (a) a local authority;
- (b) any individual employed by a local authority under a contract of service; or
- (c) any organisation which is owned, controlled or managed by a local authority or by more than one local authority;

“relevant services” means services provided by a local authority under or by virtue of—

- (a) Part II of the 1995 Act; or
- (b) any of the enactments mentioned in section 5(1B)(a) to (o) of the Social Work (Scotland) Act 1968(c).

Period for preparation and publishing of plans

3. The period within which each local authority shall prepare and publish a plan under section 19 of the 1995 Act for the provision of relevant services for or in respect of children in their area shall be one year commencing on 1st April 1997 (being the day appointed for the coming into force of the said section 19).

Review of plans

4. The plan prepared and published by a local authority under section 19 of the 1995 Act shall be reviewed by the authority from time to time under subsection (3) of that section, which, having regard to that review, may publish any modifications to the plan or a new plan in substitution for that plan.

Details in plans: proposals to purchase and provide services

5. Each local authority shall include in any plan, including any plan as modified by them, which they prepare and publish for the provision of relevant services for or in respect of children in their area details of such proposals as they may have to-

- (a) purchase any such services from independent sector providers of such services; and
- (b) provide such services themselves or in association with another local authority, as part of the authority’s overall provision of relevant services for their area.

(a)1995 c.36.

(b)1968 c.49; section 5(1A) was inserted by the National Health Service and Community Care Act 1990 (c. 19), s.51 and amended by sub-paragraph (3) of paragraph 76 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

(c)1968 c.49; section 5(1B) was inserted into the 1968 Act by paragraph 76(3)(b) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

6. Where including in any plan and any modification to a plan details of proposals in terms of paragraph 5 above, a local authority shall provide the following information in relation to each type of service—

- (a) the volume which they propose to purchase from each category of independent provider and the volume which they propose to provide either themselves or in association with another authority; and
- (b) the estimated expenditure on purchasing that service from each category of independent sector provider and the estimated expenditure on the service which they propose to provide either themselves or in association with another authority.

J. W. Sinclair
Assistant Secretary,
Scottish Office

Edinburgh
19th December 1996

 STATUTORY INSTRUMENTS

1996 No. 3258 (S. 248)

CHILDREN AND YOUNG PERSONS**The Emergency Child Protection Measures
(Scotland) Regulations 1996**

<i>Made</i>	<i>18th December 1996</i>
<i>Laid before Parliament</i>	<i>31st December 1996</i>
<i>Coming into force</i>	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 62 of the Children (Scotland) Act 1995(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Emergency Child Protection Measures (Scotland) Regulations 1996 and shall come into force on 1st April 1997.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Children (Scotland) Act 1995;

“applicant” means the person or the local authority who applied to a justice of the peace for an authorisation under subsection (1) or, as the case may be, subsection (2), of section 61 of the Act;

“place of safety” has the meaning given to that term in section 93(1) of the Act;

“Principal Reporter” has the meaning given to that term in section 93(1) of the Act; and

“relevant person” in relation to a child has the meaning given to that term in section 93(2)(b) of the Act.

Duties of constable where child removed to place of safety

3. As soon as reasonably practicable after a child has been removed by a constable to a place of safety under section 61(5) of the Act, a constable shall, subject to regulation 5 below, take such steps as are reasonably practicable to inform the following persons of the matters specified in regulation 4 below:—

- (a) any relevant person in relation to the child;
- (b) any person, other than a relevant person, with whom the child was residing immediately before being removed to the place of safety;
- (c) the local authority for the area in which the place of safety to which the child was removed is situated;
- (d) where not falling within paragraph (c) above, the local authority for the area in which the child is ordinarily resident;
- (e) the local authority for the area in which the child was residing immediately before being removed to a place of safety (where they are not the authority under (c) or (d) of this regulation); and
- (f) the Principal Reporter.

4. The following matters are specified as matters on which the persons mentioned in regulation 3 above are to be informed:—

- (a) the removal of the child by a constable to a place of safety;
- (b) the place of safety at which the child is being, or is to be, kept;
- (c) the reasons for the removal of the child to a place of safety; and
- (d) any other steps which a constable has taken or is taking to safeguard the welfare of the child while in a place of safety.

5. Where a constable is informing the persons mentioned in paragraphs (a) and (b) of regulation 3 above, he may, where he considers it necessary to do so in order to safeguard the welfare of the child, withhold from those persons any of the information specified in regulation 4(b) and (d) above.

6. Where a child has been removed to a place of safety by a constable under section 61(5) of the Act, a constable keeping him in a place of safety shall, subject to subsections (6) to (8) of that section, continue to so keep him only so long as he has reasonable cause to believe that—

- (a) the conditions for the making of a child protection order laid down in section 57(1) of the Act are satisfied; and
- (b) it is necessary to keep the child in a place of safety in order to protect him from significant harm (or further such harm).

Duties where authorisation granted by justice of the peace to protect child

7. Where an authorisation is granted by a justice of the peace under subsection (1) or (2) of section 61 of the Act, the applicant shall implement the authorisation as soon as reasonably practicable.

8. Where an authorisation has been granted under section 61 of the Act, as soon as reasonably practicable after steps have been taken to prevent any person from removing the child from a place where he is then being accommodated, or the child has been removed to a place of safety, the applicant shall, subject to regulation 10 below, take such steps as are reasonably practicable to inform the following persons of the matters specified in regulation 9 below—

- (a) any relevant person in relation to the child;
- (b) any person, other than a relevant person, with whom the child was residing immediately before the grant of the authorisation;
- (c) where not the applicant, the local authority for the area in which the place of safety to which the child was or is to be removed is situated;
- (d) where not falling within paragraph (c) above and where not the applicant, the local authority for the area in which the child is ordinarily resident;
- (e) where not the applicant, the local authority for the area in which the child was residing immediately before the grant of the authorisation (where they are not the authority under (c) or (d) of this regulation); and
- (f) the Principal Reporter.

9. The following matters are specified as matters on which the persons mentioned in regulation 8 above are to be informed:—

- (a) the grant of the authorisation and the steps taken to implement it;
- (b) the place of safety at which the child is being or is to be kept or, as the case may be, the place at which the child is being accommodated;
- (c) the reasons for the grant of the authorisation; and
- (d) any other steps which the applicant has taken or is taking to safeguard the welfare of the child while in a place of safety.

10. Where an applicant is informing the persons specified in paragraphs (a) and (b) of regulation 8 above, he may, where he considers it necessary to do so in order to safeguard the welfare of the child, withhold from any of those persons any of the information specified in regulation 9(b) and (d) above.

Notice where authorisation ceases to have effect

11. Where an authorisation granted under subsection (1) or (2) of section 61 of the Act ceases to have effect by virtue of section 61(4)(a) of the Act (authorisation ceasing to have effect where not implemented within 12 hours of being made), the applicant shall immediately notify the justice of the peace who granted the authorisation and as soon as reasonably practicable give notice of this to the persons specified in regulation 8 above.

Duties where child subject to emergency protection measures

12. In regulations 13 to 16 below—

“emergency protection measures” in relation to a child means—

- (a) further to the grant of an authorisation by a justice of the peace under subsection (1) or (2) of section 61 of the Act, the prevention of the removal of the child by any person from a place where he is then being accommodated or, as the case may be, the removal of the child to a place of safety and keeping him there until the expiry of the authorisation; and
- (b) the removal of a child to a place of safety by a constable under section 61(5) of the Act, and keeping him there;

“specified person” means—

- (a) where an authorisation has been granted by a justice of the peace under subsection (1) or (2) of section 61 of the Act, the applicant for such authorisation; and
- (b) where a child has been removed to a place of safety by a constable under section 61(5) of the Act, a constable keeping him in such a place.

13. As early as is consistent with the protection and welfare of the child, the specified person, taking or having taken emergency protection measures, shall taking account of the age and maturity of the child—

- (a) inform the child of the reasons for the emergency protection measures being taken or having been taken, and of any further steps which may be taken with respect to him under the Act or under these Regulations; and
- (b) so far as practicable, give the child an opportunity to express his views, and have regard to any views as may be expressed before continuing with emergency protection measures or taking any such further steps.

14. Where emergency protection measures have been taken in relation to a child, the specified person shall do what is reasonable in all the circumstances for the purpose of safeguarding the welfare of the child (having regard in particular to the length of the period during which the child will be subject to such measures).

15. Where further to emergency protection measures a child is taken to a police station as a place of safety, the specified person shall as soon as reasonably practicable take the child to another type of place of safety and keep the child in that other place.

16. Where a child is subject to emergency protection measures, the specified person in relation to—

- (a) any relevant person in relation to the child; and
- (b) any person with whom the child was living immediately before such measures were taken, shall allow; and
- (c) any other person, may allow;

such contact (if any) with the child as, in the view of the specified person, is both reasonable and in accordance with the welfare of the child.

James Douglas-Hamilton
Minister of State,
Scottish Office

St Andrew's House,
Edinburgh
18th December 1996

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations make provisions concerning the duties of any person removing a child to, or keeping him in, a place of safety.

The Regulations specify the persons who should be notified and the information about which they should or may be notified where a child has been removed to a place of safety by a constable or where a justice of the peace has granted an authorisation to protect a child. They also provide for a constable keeping a child in a place of safety only so long as he has reasonable cause to believe certain things are satisfied.

The Regulations also deal with the arrangements for giving notice where an authorisation ceases to have effect; for informing and taking account of the views of a child who is subject to emergency protection measures and certain other matters related to the child's welfare; and for allowing contact with a child who is subject to emergency protection measures.

 STATUTORY INSTRUMENTS

1996 No. 3259 (S. 249)

CHILDREN AND YOUNG PERSONS

**The Refuges for Children
(Scotland) Regulations 1996**

<i>Made</i>	<i>18th December 1996</i>
<i>Laid before Parliament</i>	<i>31st December 1996</i>
<i>Coming into force</i>	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 38(2) of the Children (Scotland) Act 1995(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Refuges for Children (Scotland) Regulations 1996 and shall come into force on 1st April 1997.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“the Act” means the Children (Scotland) Act 1995;

“the 1968 Act” means the Social Work (Scotland) Act 1968(b);

“authorised officer” means a police constable for the time being authorised for the purpose of these Regulations by the chief constable for the police area within which—

- (a) a residential establishment which is designated or approved as a refuge in pursuance of section 38(1) (short-term refuges for children at risk of harm) of the Act is situated, or
- (b) a household which is designated as a refuge in pursuance of section 38(1)(a)(ii) of the Act is situated;

“responsible person” in relation to a child means—

- (a) except where a person has care of the child as mentioned in paragraph (b), (c) or (d) below—
 - (i) a parent of his;
 - (ii) a person who is not a parent of his, but who has parental responsibility in respect of him; and
 - (iii) any person who ordinarily has charge of, or control over, him;
- (b) any person (excluding a local authority) who for the time being has responsibilities as respects the child by virtue of an order made, or authorisation or warrant granted, under Chapter 2, 3 or 4 of Part II of the Act;
- (c) any local authority looking after a child in terms of section 17(6) of the Act;
- (d) any person (including a local authority) providing accommodation to a child looked after by a local authority by any of the means specified in section 26 of the Act.

(a)1995 c.36.

(b)1968 c.49.

(2) In these Regulations any reference to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

Designation of refuges: local authority establishments and foster households

3. A local authority may designate for the purpose of providing refuge to children under section 38(1)(a) of the Act—

- (a) a residential establishment controlled or managed by them; and
- (b) a household which is approved by virtue of section 5(3)(b) of the 1968 Act (provision for securing that persons are not placed in any household unless the household has prescribed approval),

where the authority are satisfied as to the matters specified in regulation 4.

4. A local authority shall, before making a designation under regulation 3, satisfy itself that—

- (a) the establishment or, as the case may be, the household is a suitable place in which to provide refuge for a child, and has accommodation and facilities suitable for that purpose;
- (b) the officer in charge of that establishment or as the case may be the person whose household is approved is a suitable person to have responsibility for a child while refuge is being provided for the child at the establishment or household; and
- (c) appropriate services to safeguard a child being provided with refuge are available to the child while taking refuge at that establishment or household.

Approval of other residential establishments as refuges

5. A local authority may, on an application to them in writing by a person who carries on a residential establishment in respect of which the person is registered as mentioned in section 61(2)(a) of the 1968 Act, and where satisfied as to the matters specified in regulation 6, give approval to the use of the establishment or such part of the establishment as the authority may specify for the purpose of providing a refuge for children under section 38(1)(b) of the Act.

6. A local authority shall, before giving approval under regulation 5, satisfy itself that—

- (a) the establishment or the specified part of it is a suitable place in which to provide refuge for a child, and has accommodation and facilities suitable for that purpose;
- (b) the person carrying on the establishment (or the specified part of the establishment) or, where that person is not the manager of the establishment, the manager, is a suitable person to have responsibility for a child while refuge is being provided for the child at the establishment; and
- (c) appropriate services to safeguard the child being provided with refuge are available to the child while taking refuge in the establishment or the specified part of it.

Certificate of designation and approval

7. Where a local authority make a designation under regulation 3, or give approval under regulation 5, the authority shall—

- (a) draw up a certificate of designation or as the case may be of approval which—
 - (i) is dated and signed on its behalf;
 - (ii) describes the purpose of the designation or approval; and
 - (iii) specifies the establishment or part of the establishment or household, to which the designation or approval relates; and

(a)Section 61(2) was amended by the Registered Establishments (Scotland) Act 1987 (c.40), section 1(2); and the Children (Scotland) Act 1995 (c.36), section 34(2).

- (b) send the certificate to—
 - (i) the officer in charge of the establishment, which is designated under regulation 3(a);
 - (ii) the person whose household is designated under regulation 3(b); and
 - (iii) the person carrying on the establishment, which is approved under regulation 5.

Requirements where designation or approval in force

8. (1) The provisions of this regulation shall apply while a designation or as the case may be an approval under these Regulations is in force with respect to a residential establishment or household.

(2) A person whose household has been designated under regulation 3(b) shall notify the local authority forthwith of—

- (a) any change in the composition of his household or in the accommodation in the household; and
- (b) any other change in his personal circumstances and any other event affecting either his capacity to provide refuge for a child or the suitability of his household for that purpose.

(3) A person who carries on a residential establishment which has been approved under regulation 5 shall notify the local authority forthwith of—

- (a) any change in the accommodation in the establishment (or the part of it) approved for use as a refuge; and
- (b) any other change in his circumstances or any other event affecting either his capacity (or the capacity of his employees at the establishment) to provide refuge for a child or the suitability of the establishment for that purpose.

(4) As soon as reasonably practicable after providing refuge for a child, and in any event within 24 hours of such provision, the person carrying on a residential establishment approved under regulation 5 shall notify the local authority and the authorised officer—

- (a) that a child is being provided with refuge;
- (b) of the name of the child, his last permanent address, and the name and address of any responsible person in relation to the child as far as he has been able to ascertain that information;
- (c) of the telephone number by which the person providing the refuge may be contacted.

(5) Where subsequent to giving notification under paragraph (4) above the person discovers any of the information specified in that paragraph not previously known to him, he shall immediately notify the local authority and the authorised officer accordingly.

(6) As soon as reasonably practicable after a local authority provide refuge for a child in a designated residential establishment, or arrange for a person to provide a child with refuge in a designated household, and in any event within 24 hours of such provision, the authority shall notify the authorised officer of the information specified in paragraph (4) above.

(7) Where subsequent to giving notice under paragraph (6) the local authority discover any information specified in paragraph (4) not previously known to them, they should immediately notify the authorised officer accordingly.

(8) Where a local authority:—

- (a) has been notified under paragraph (4); or
- (b) has provided refuge for a child in a designated residential establishment, or arranged for a person to provide a child with a refuge in a designated household,

they shall have a duty as soon as reasonably practicable after providing a refuge or arranging a refuge or receiving notification under paragraph 8(4) to notify in writing, insofar as the information is reasonably ascertainable by the local authority—

- (i) a responsible person in relation to the child; and
- (ii) any local authority in whose area the child had his last permanent address (and this duty shall subsist in respect of subsequently ascertained relevant information about the identity of responsible persons or last permanent address),

with the said notification only required to advise that the child has been admitted to a refuge.

Review of designation or approval

9. A local authority shall at such times as they consider appropriate review the designation or approval under these Regulations, and in particular as to whether they continue to be satisfied as to the matters specified in regulation 4 or, as the case may be, regulation 6.

Withdrawal of designation or approval

10. (1) A local authority may, in any of the circumstances described in paragraph (2) below, withdraw a designation made or approval given under these Regulations at any time by giving notice in writing to the person to whom the certificate was sent under regulation 7.

(2) The circumstances in which a local authority may withdraw a designation or approval are—

- (a) where on a review under regulation 9 the authority cease to be satisfied as to the matters specified in regulation 4 or, as the case may be, regulation 6;
- (b) where a person carrying on a registered establishment fails to comply with any provision of Part II of the Residential Establishments – Child Care (Scotland) Regulations 1996(a);
- (c) where a person whose household is approved by virtue of section 5(3)(b) of the 1968 Act has had the approval terminated in terms of regulation 10 of the Fostering of Children (Scotland) Regulations 1996(b);
- (d) where the person providing the refuge or any person assisting him in that respect has had proceedings instituted against him in relation to, or has been convicted of, any criminal offence;
- (e) where a person providing a refuge fails to comply with a requirement of regulation 8; and
- (f) where for any other reason the local authority are satisfied that an establishment of theirs, an approved household or a registered establishment, or a specified part of the establishment, is unsuitable to provide a refuge for children.

(3) A local authority shall withdraw an approval given under these Regulations by giving notice to the person to whom the certificate of approval was sent—

- (a) where the person carrying on a registered establishment intimates in writing that he no longer wishes the establishment to be approved for the purposes of providing a refuge; and
- (b) where the registration of an establishment under section 61 of the 1968 Act has been cancelled under section 64 of the 1968 Act, and in the use of (b) withdrawal of designation shall be effective from the time of the cancellation of the registration under section 64 of the 1968 Act.

(4) Where a designation or approval is withdrawn, the person to whom the certificate was sent shall return it forthwith to the local authority.

(a)S.I. 1996/3256.

(b)S.I. 1996/3263.

Extension of refuge: exceptional circumstances

11. The circumstances hereby prescribed as exceptional circumstances for the purposes of section 38(5) of the Act in which any reference in that section to the relevant period shall be construed as a period which does not exceed fourteen days are where—

- (a) a responsible person in relation to a child has not been found within a period of seven days from the first day on which the child was provided with refuge; and
- (b) at the end of that period of seven days the authority do not at that time have suitable alternative accommodation for the child.

James Douglas-Hamilton
Minister of State,
Scottish Office

St Andrew's House,
Edinburgh
18th December 1996

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations made under section 38(2) of the Children (Scotland) Act 1995 make provisions concerning the designation and approval of establishments or households as refuges and for the review and withdrawal of such designation or approval.

The Regulations specify requirements to be complied with where designation or approval is in force and persons who should be notified, by when they should be notified and the information about which they should be notified where a child is provided with refuge.

The Regulations also prescribe the exceptional circumstances where a child may be provided with a refuge beyond the normal 7 day limit to a 14 day limit.

The Publication of Information about Services for Children Direction 1996

The Secretary of State, in exercise of the powers conferred on him by section 20 of the Children (Scotland) Act 1995(a), and section 5(1A) of the Social Work (Scotland) Act 1968(b) and of all other powers enabling him in that behalf, hereby gives the following Direction:—

Citation and comment

1. This Direction may be cited as the Publication of Information about Services for Children Direction 1996 and shall come into force on 1st April 1997.

Interpretation

2. In this Direction—

“the 1995 Act” means the Children (Scotland) Act 1995;

“relevant services” means services provided by a local authority under or by virtue of—

(a) Part II of the Act; or

(b) any of the enactments mentioned in section 5(1B)(a) to (o) of the Social Work (Scotland) Act 1968(c).

Period for publication of information

3. Each local authority shall prepare and publish in terms of section 20(1) of the 1995 Act the information referred to in section 20(1) of that Act within one year of 1st April 1997.

N. G. Campbell
Under Secretary,
Scottish Office

Edinburgh
27th December 1996

(a)1995 c.36.

(b)1968 c.49; section 5(1A) was inserted by the National Health Service and Community Care Act 1990 (c.19), s.51 and amended by sub-paragraph (3) of paragraph 76 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39).

(c)1968 c.49; section 5(1B) was inserted into the 1968 Act by paragraph 76(3)(b) of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

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